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ESSAY

BORDERS (EN)GENDERED: NORMATIVITIES, LATINAS, AND A LATCRIT PARADIGM

BERTA ESPERANZA HERNÁNDEZ-TRUYOL*

Because I, a *mestiza*,
continually walk out of one culture
and into another,
because I am in all cultures at the same time,
alma entre dos mundos, tres, cuatro
me zumba la cabeza con lo contradictorio.
Estoy norteadada por todas las voces que me hablan
*simultáneamente.*¹

[E]ste es el miedo of always being
an outsider; no matter who I am
with, the sense of belonging is
always temporary; the fear of
living in the Borderlands paralyzes
and silences me.²

The strongest prisons are built
with walls of silence.³

Latinas/os do a lot of world traveling, with Latinas additionally journeying through the *mundos* of gender inequality.⁴ We travel be-

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¹ Gloria Anzaldúa, *Borderlands/La Frontera: The New Mestiza* 77 (1987).

² Papusa Molina, *Recognizing, Accepting and Celebrating our Differences*, in *Making Face, Making Soul/Haciendo Caras* 326, 327 (Gloria Anzaldúa ed., 1990) [hereinafter *Haciendo Caras*].

³ Janice Mirikitani, *Prisons of Silence*, in *Haciendo Caras*, supra note 2, at 199, 199.

⁴ See, e.g., María Lugones, *Playfulness, "World"-Travelling, and Loving Perception*, in *Haciendo Caras*, supra note 2, at 390, 391-92. The author offers her perspective on world traveling.

As outsiders to the U.S. mainstream, women of color practice "world"-traveling, mostly out of necessity. I affirm this practice as a skillful, creative, rich, enriching and, given certain circumstances, as a loving way of being and living.

tween our various and varied multiple worlds, psychic and physical—from *casa y familia* to *calle y trabajo*; from *español* to *inglés* to *espan-glish*; from *tía* to lawyer; from *hija* to *profesora*; from *normativa* to outsider. We weave our way, as we weave our hair, in and out of passages that we inhabit, being a little alien everywhere.⁵

As a Latina law professor,⁶ I am used to traversing *mundos*, yet rarely do they so visually, physically, intellectually, and emotionally converge/collide as they did at a recent meeting of Latina/o lawyers, students, and law professors that took place in Miami, Florida—home to much of my *familia*, including *mami y papi*. My multidimensional identity, the complicated pathway between/among my *mundos*—pathways that constantly intersect, flow, and clash—is the channel for this Essay.

Such world traveling is not unique to me. Rather, it is a common daily experience for all Latinas/os in the United States by virtue of our status as Latinas/os. We are the interdependent intersections of our race, gender, color, ethnicity, nationality, ancestry, culture, and language. Our multilingualism is defined not by the languages we literally speak (in fact, many of us speak only Spanish or only English) but instead by virtue of the worlds we inhabit, the journeys we take.

This multidimensionality of Latinas/os is in tension with the dominant legal paradigms that take a single-attribute, analytical approach to identity. The dominant model, for example, presupposes a monolithic racial or sexual identity “that can be described independent of other facets of experience.”⁷ Such essentializing⁸ of identity is inap-

I recognize that we do much of our travelling, in some sense against our wills, to hostile White/Anglo “worlds.”

Id.

⁵ See Anzaldúa, *supra* note 1, Preface (defining psychic borderlands as “physically present wherever two or more cultures edge each other, where people of different races occupy the same territory, where under, lower, middle and upper classes touch, where the space between two individuals shrinks with intimacy”).

⁶ As a Latina in the legal academy holding a tenure track, nonsegregated clinical position, I am one of but 43 in the country and, if one considers my tenured status, one of only 13 according to a 1996-97 list of Latina/o law professors prepared by Michael A. Olivas (on file with the *New York University Law Review*). The total number of tenured Latinas is based upon a September 27, 1996 conversation with Olivas, in the course of which we went through the list and identified the tenured Latinas. Our count includes only fulltime, tenure track, nonclinical (if the same constitutes a separate track) appointments. There are an additional 10 Latinas/os in separate track clinical and/or instructor/lecturer positions, of whom nine are women.

⁷ Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, in *Critical Race Theory: The Cutting Edge* 253, 255 (Richard Delgado ed., 1995) [hereinafter *Cutting Edge*].

⁸ On essentialism, see generally bell hooks, *Ain't I a Woman?: Black Women and Feminism* (1981) (noting that, for black women, race and sex are not separable categories); Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist*

propriate for Latinas/os whose multidimensionality is central to their personhood.

Because this existing methodology vivisects and atomizes the Latina/o identity, it is necessary for Latinas/os to deconstruct the normative paradigm/rule of law, expose its limitations in re/presenting Latinas/os, and reject it for its flawed foundation that misapprehends the Latina/o. Latinas/os must also create *nuevas teorías* (new theories) that understand, penetrate, define, and elucidate the content and meaning of our multidimensional identities and develop, expand, and transform the construct in such a way that translates, incorporates, and realizes Latinas'/os' worldviews. The promise of a LatCrit theoretical model lies in its ability to debunk the ineffectual dominant model, as applied specifically to the Latina/o position and condition under "American"⁹ law and within "American" society, and to create *nuevas teorías*.

This Essay, developed in a prologue and three parts, adopts Latinas'/os' world traveling as a metaphor for Latina/o multidimensionality and as a springboard for LatCrit theorizing. The Prologue is a brief diary entry of *un fin de semana viajando mundos*—a weekend of actual traveling between New York and Miami; law and *familia*; *profesora* and learner; colleague and *hija*; *español* and English; *norte y sur*; *normativa* and other; indigenous and alien. This abbreviated record of a Latina's life reveals, exposes, and unveils Latinas'/os' daily crossdressing simply by virtue of their *latinidad*. This Prologue thus serves as a concrete backdrop for the analytical, political, and theoretical points addressed in the remaining parts of this Essay which explores two sets of relationships vis-à-vis their significance to and impact on the development of LatCrit theory.

The first link is the external relationship of Latinas/os to NLW¹⁰ normativity; the second is the internal relationship of Latinas to Latino normativity. Both of these relationships are central to a LatCrit paradigm, as the "othering" effects of NLW normativity on all of La-

Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics, 1989 U. Chi. Legal. F. 139 (noting inappropriateness of dominant single axis framework that treats race and sex as mutually exclusive); Harris, *supra* note 7 (criticizing gender essentialism for failing to account for black women's experience); see also *infra* note 121 (discussing consequences of essentialism in legal theory).

⁹ I use "American" in quotes to denote United States culture. The quotes serve to recognize and remind of the appropriation of a term that truly extends beyond U.S. borders, as Canadians, too, are North Americans. Furthermore, all of Central and South America also can claim the "American" moniker. In placing the word in quotes, I (re)create borders and at the same time eliminate them.

¹⁰ Non-Latina/o white. Throughout the Essay I will use NLW to refer to the aggregated non-Latina/o white as well as NLaW and NLoW to refer in a gender specific manner to non-Latina/o white females and males, respectively.

tinias/os and of Latino normativity on Latinas must be confronted, deconstructed, and eliminated before a nonessentialist, inclusive theoretical model can be advanced.

Part I uses narrative to compare and contrast NLW and Latina/o normativities of race, ethnicity, nationhood, and language. It exposes the race, color, ethnicity, gender, nationality, culture, and language *fronteras* Latinas/os must cross—the “othering” we experience—while traversing the world as defined by the dominant culture. This comparing and contrasting of Latina/o and “American” normativities in Part I defines the need for a LatCrit theoretical model that does not subordinate the Latina/o experience.

In Part II this Essay exposes how Latinas’ assorted deviations from the normative male prototype, combined with gendered Latino norms, including the gendered nature of the Spanish language adding to these internal boundaries and confines, multiplies their *fronteras* and complicates their journeys. The borderlands created for Latinas by the overlapping gender biases of the external “American” and internal Latino normativities, exacerbated by gendered cultural norms, underscore the need for the development of *teorías* that specifically will recognize, embrace, and espouse Latinas’ identities, interests, and issues. LatCrit is a *teoría* that can address the concerns of Latinas in light of both our internal and external relationships in and with the worlds that have marginalized us.

Finally, in Part III this Essay proposes a LatCrit theoretical model that uses Latina/o panethnicity, representative of race, gender, nationality, color, language, ethnicity, and cultural diversity, to stimulate and inspire the construction of a LatCrit matrix that places multidimensionality at the center of paradigm formation by plaiting a multicultural, multilingual, multiethnic fabric into its philosophy, construction, and logic. This model is important because it will recognize the multidimensionality of Latinas/os and the particular position of Latinas’ dual relationship with the internal *comunidad Latina* and the external “American” culture in developing a discourse which incorporates our realities and identities.

This proposal suggests that LatCrit theory adopt a construct based on indivisibility, inviolability, and interdependence of rights and identities. This model rejects the identity-as-atomized approach, adopting instead an approach that re/constructs, develops, expands, and transforms the existing dominant legal paradigm in an interpretation that accepts, incorporates, embraces, and enables Latina/o multidimensionality. This Essay concludes that such an aspirational LatCrit paradigm can transfigure the status of Latinas/os in the United States from marginal actors to protagonists in legal theorizing.

PROLOGUE
WORLD TRAVELING—A BRIEF DIARY OF TIME
IN THE LIFE OF A LATINA

Sunday, 5:25 p.m.

I am on the plane back home from the Hispanic National Bar Association's (HNBA's) Annual Conference at the Fountainbleu Hotel in Miami Beach, Florida, where my *mami* and *papi* live. Well, sort of. I mean, I am on the plane and my *mami* y *papi* live in Miami, but I only sort of went to the HNBA conference. I was there, but I wasn't. I was at the law professors' colloquium and student programs that took place in the same space. Well, sort of. It was the same hotel, but I was *vijando mundos*. I was teacher, colleague, friend, expert, *hija*, *prima*, *sobrina*. I was in *familia* with my fellow Latinas/os—parents, students, colleagues; non-Latina/o students, friends, colleagues, and possible *familia* to be; *hablando español*, *inglés*, lawspeak and layspeak; translating from one to the other, not noticing the transitions as I crossed borders between worlds so familiar I easily avoided their unique obstacles. As if with visceral sensors, I went around the different walls with ease, at least most of the time. But I am getting ahead of myself.

* * *

The previous Thursday

As I board the plane in New York, one of the flight attendant's announcements resounds with the comfortingly familiar Spanish-accented lilt. I immediately feel the comfort of going home—to a place I've never lived, to a house I've rarely visited, where *mami* and *papi* live. I have two talks to prepare, so I remain in professor zone during the flight. But when the announcement is made that we are about to touch down, my mind automatically travels to the smells of *la casa*.

Mami y *papi* pick me up at the airport and we drive to the conference site. This starts the Spanish-speak, pampered *hija* journey. As I check in, English seeping its way accentedly back into the environment, I shift to the generic adult professional woman until I encounter colleagues from various schools where again I am a professional Latina, until I introduce *mami* y *papi*, and the *hija* intersects. After warm hellos, as we move towards the lounge, Spanish students call out to me. We pause and talk in *español*, leaving lawspeak behind, and I become a little less the

profesora with parrots on her mind¹¹ and more a *persona* with parents in her life. We finally walk through the maze of people to *pasar un rato con la vieja y el viejo* over a nice bottle of wine and *conversar* about *familia* and *amistades*.

Friday

At midnight, *mami* and *papi* go home. Spanish lawspeak then prevails as fellow *profesores/as* mill around the table until the looming presentations nudge us to retire to our respective refuges. I transition to a bi-lawspeak/layspeak English/*español* world where the computer screen English flows into the TV screen Spanish subtly coying me into blending the two.

At 2:30 a.m., I finally float into a world of short bilingual dreams. I make, in this netherworld, the final preparations for the professional presentations and the family reunions that will take place during the days that follow, until the phone rings much too early and a familiar voice from my childhood that has traveled with me in various of my worlds cheerfully awakens me *en español*. This is a pleasant surprise, as I was expecting the impersonal computer voice of the electronic, *en inglés*, telephonic wakeup system. Well, sort of. Electric voice would have let me sleep a few more minutes. Pepito and I make plans to meet, to attend each others' presentations. We speak Spanish, English, Spanglish, family, and law.

The conference goes well, in fact it is one of the more exciting and attention-retaining ones I've ever attended, certainly the most diverse. The Spanish press asks to speak with me about the Civil and Political Rights panel. I enlist Elvia to join me for the interview after realizing she is the only other panelist who would be comfortable speaking in Spanish. We talk about the xenophobic, racist underpinnings of the new immigration laws and their impact on Latinas/os—citizens and noncitizens alike. I translate myself to discuss *racismo*, *etnicismo*, *xenofobia*; Elvia translates herself and talks about *la migra*, and the *redadas* of *mejicanas/os* in Texas—*americanas/os y extranjeras/os: se las/os llevan a todas/os igual*.

I go to my room for the forty-five minutes of the brief hour that is scheduled as personal time. The light is blinking on the

¹¹ I teach property law to first-year students and thus do the obligatory wild animal stint. I try to make these cases (and through them the law) come alive by using cases where the animals are subjects rather than just objects of our discussion. One of those is *Chester*, a parrot. See *Conti v. ASPCA*, 353 N.Y.S.2d 288 (N.Y. Civ. Ct. 1974) (holding that escaped parrot was domesticated animal and thus not subject to rule of *ferae naturae*).

phone and the message is from *mami y papi* who are waiting for me in the lobby. I rush out, and on the ride down the elevator I change from law professor to *hija* in a brief seven flights. *Mami y papi* are waiting for me at the same table we occupied at the lounge the night before. They have their *tragos*, so I order one. It is relaxing to see them, comforting not to be “on.” It’s a short visit, as dinner transportation is planned for 7:15 p.m. *Mami y papi* go home, and the group of law professors attending the colloquium go to a restaurant on South Beach owned by a *cubana* star. Of course, as I am in Miami, I expect to have real Cuban food. Of course, it’s a trendy place in South Beach, so I don’t. We return to the hotel and continue multilingual conversations for a while.

My presentation the next day needs to be completed, so I return to my hotel room imbued in law mode. This trance is broken as I realize I have a nice bottle of red Argentinean wine that *mami y papi* brought me. The wrappings smell of home, and I uncork the bottle feeling the comfort of *la casa*. I pour a glass as my thoughts go to talking about *la cultura Latina*, *tejiendo* (pleating) my life in and out of the presentation. I am happy with the flow, the blending. I sleep.

Saturday

After an early rise for business meetings and a brief stop by the hotel’s business center to print out my remarks, the morning is calm. I get to spend a little time with a friend/colleague—another of the first Latinas in the academy. We relax walking *despacito en la playa*, enjoying the warm surf, *hablando*, *chismeando*. Finally, we amble back to her room—I’d checked out earlier as I will be spending the last night *en casa*. As I weave my hair into a *trenza*, we finish the wine from *mami y papi*, right before we meet them and *tía y tío* (who are here for the presentation) for lunch.

We eat, chat, and meander to the conference room. It pleases me to braid English and Spanish into my presentation. After all, how could I talk about “Gendered Invisibility, Culture Paradoxes, and LatCrit Theory” without interlacing all parts of my multiple selves? I try to speak at a moderate pace to ensure that *la familia* can follow some of what I say. I wonder what they will think of my stories. Many involve them, but we lived these stories, never discussing them. I wonder if they remember the things I do, as I remember them. I wonder if I will re/create vul-

nerabilities that, despite feeding my work, they might rather leave behind.

Richard Delgado's keynote—a new *Rodrigo Chronicle*—is, as usual, visionary. *Mami, papi, tía, y tío* could not follow his wonderful chat. I promise to get a copy of the printed version so that they can enjoy it—reading English is easier than following Richard's fastpaced talk. The closing by Nelson Diaz¹² is inspirational, showing that one person who cares about community and does something can lead others in similar paths. *La familia* understands him fine, as he has a little bit of a Spanish lilt in his English-speak.

Mami, papi, and I go out to dinner before Pancho's party that will celebrate the successful colloquium. Finally, some Cuban food, the real stuff, in a *restaurante nicaraguense*; the *postres* were *nica*, the *vino chileno*. The *vieja y viejo* drive me to the party. They are tired and go home. It would be interesting to have *mami y papi en la fiesta* bridging my *mundos*.

This festive reunion is wonderful. The people are diverse, the languages varied, the accents even more so. But the *comida* (food)—*pastelitos de queso, carne y guayaba, croquetas y con-gris*—is *definitivamente cubana*. After much visiting, eating, and imbibing, Pepito takes me home where *mami* is waiting up for me. The familiar scents of home cradle me to sleep.

Sunday

Mami y papi wake me up so that we have the time to do everything planned—*desayuno* and *almuerzo*—before they take me to the airport at 2:00 p.m. We go to have our *café con leche y pastelitos* at their usual breakfast place. We then go to another small restaurant where they get me two huge *sandwiches cubanos* to bring home with me.

Papi takes *mami* and me home so we can greet the *familia* who is coming to visit and share a meal with us. He goes to pick up the *comida*. The family soon arrives: two sets of *tías y tíos*, as well as a couple of *primas* and one of their partners. I have not met him before. Really nice fellow—a kindred academic (not law). Brave, I immediately think: he does not speak one word of Spanish and risks coming into this Spanish-speak world. We hit it

¹² General Counsel, U.S. Department of Housing and Urban Development. He delivered the closing remarks at the Law Professors' Colloquium on International Law, Human Rights & LatCrit Theory that took place as part of the Hispanic National Bar Association's (HNBA's) 1996 Annual Convention in Miami Beach, Florida. He addressed issues of community and working together to achieve success.

off. I did a lot of the translating for him—taking quite a bit of license with my interpretations.

Funny thing how his presence made me so aware of my worlds. Where I live and work I always feel a little alien; in Miami at my family's "home," I feel a similar and familiar sense of foreignness. The festivities, however, distract me from these thoughts, and I share laughter, conversation, *vino*, and *comida sabrosa* (great food)—*tortilla española* (Spanish tortilla: a multi-layered potato omelette) and *paella*. We joke and talk (and sometimes I translate) until it is time for me to go.

Mami y papi take me to the airport. We hug and kiss when they drop me off. They return *a la casa* where they will rejoin the rest of *la familia* for a typical Sunday afternoon of dominos, *más comida*, and chatter. A dip in the pool if it stops raining.

As I exit the car, enter the airport building, and start the walk to the plane, I start to feel the changes of my transition. I'm walking faster, I'm impatient with dawdlers, I'm on my way to a cramped little seat on a plane that will take me "home," yet another place where many want me to speak only English, where my name makes me foreign in spite of my U.S. passport, where my ethnicity renders me "other," where my sex makes me invisible, where I will get back to work . . .

This brief account represents the routine journeys Latinas/os take through race, ethnicity, and nationhood. The moving in and out of worlds of language and culture, and the outlook associated with, entrenched in, and intrinsic to this multilingualism, is performed instinctively, unnoticed, subconsciously—without patent, palpable, abrupt changes, but rather fluidly as if one had the green light at the particular intersection.

Yet, in traveling different worlds, context is everything. What language I speak depends not only on with whom I am conversing but also on the topic of discussion. With law friends, Spanish conversations often travel to English as we move from social talk to legal content—most of us having been U.S. law school trained. Yet one always remains somewhat conscious of the possible discomfort and exclusion of some with monolingual dialogue (English *or* Spanish), not to mention the loss of meaning if the conversation takes place in the contextually alien tongue. Therefore, it is important and necessary to adopt a construct that not only understands but also embraces the significance of language to the narrative, rather than impose ineffectual and silencing monolingualism and homoculturalism.

Similarly, my sense of ethnicity depends on the composition of the group. Among a group of NLW colleagues, I am frequently the

generic Latina; among a group of Latinas/os, I am *cubana*; in my international human rights work I am often simply "American," *norteña*. Thus, in a mixed group, my identity travels with the various observers/participants depending on their perspectives, our relative subject positions. This shifting is significant to note because it unearths the inadequacy of the single attribute approach of the dominant theory and emphasizes the need for a model that takes a new view of identities.

Because knowledge is socially constructed, the normative paradigm's dominance is constitutive of normativity—the "right" set of identity characteristics, the correct knowledge base. Consequently, the privileged master narrative¹³ predefines and preordains the content and context for Latinas/os' travels. My weekend journey illus-

¹³ "[T]he success of the White Man's control of the world is debatable; but his success in making other people act just like him is not. No culture that has come in contact with Western industrial culture has been unchanged by it, and most have been assimilated or annihilated, surviving only as vestigial variations in dress, cooking or ethics."

Stephanie M. Wildman, *Privilege Revealed* 111-12 (1996) (quoting Ursula K. Le Guin, *Feeling the Hot Breath of Civilization*, N.Y. Times, Oct. 29, 1989, Book Review, at 11 (reviewing Mario Vargas Llosa, *The Storyteller* (1989)); see Richard Delgado, *Legal Storytelling for Oppositionists and Others: A Plea for Narrative*, in *Cutting Edge*, supra note 7, at 64, 64 (describing "stories . . . told by the ingroup . . . [that] provide it with a form of shared reality in which its own superior position is seen as natural"); see also Derrick Bell, *And We Are Not Saved: The Elusive Quest for Racial Justice* 26-50, 245-54 (1987) (discussing myth of egalitarian, colorblind constitution); Regina Austin, *Sapphire Bound!*, 1989 Wis. L. Rev. 539, 539-45 (discussing need for black women's voices so issues cease to be viewed from white middle class perspective); Derrick Bell, *White Superiority in America: Its Legal Legacy, Its Economic Costs*, 33 Vill. L. Rev. 767, 768-79 (1988) (arguing that courts reflect white supremacy and discussing economic costs of racism); Jerome McCristal Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy*, 77 Va. L. Rev. 539, 540-45 (1991) (arguing that failure to present personal experiences reinforces majoritarian perspective); Adrienne D. Davis & Stephanie M. Wildman, *The Legacy of Doubt: Treatment of Sex and Race in the Hill-Thomas Hearings*, 65 S. Cal. L. Rev. 1367, 1367-78 (1992) (illustrating how congressional hearings regarding Anita Hill's accusations against then-nominee to the Supreme Court of the United States Clarence Thomas reflected patriarchal assumptions about women); Richard Delgado, *Norms and Normal Science: Toward a Critique of Normativity in Legal Thought*, 139 U. Pa. L. Rev. 933, 937-62 (1991) [hereinafter Delgado, *Norms*] (critiquing dominant school of normative jurisprudence); Richard Delgado, *Shadowboxing: An Essay on Power*, 77 Cornell L. Rev. 813, 814-24 (1992) [hereinafter Delgado, *Shadowboxing*] (discussing dominant culture preference for "objective" norms because they are of benefit to those empowered, as they define meaning of rules); Neil Gotanda, *A Critique of "Our Constitution Is Color-Blind"*, 44 Stan. L. Rev. 1, 2-7 (1991) (presenting theory that colorblind approach promotes white supremacy); Linda S. Greene, *Multiculturalism as Metaphor*, 41 DePaul L. Rev. 1173, 1173-89 (1992) (arguing that Supreme Court's "normative vacuum" results in failure to enforce equality and inclusion); Margaret M. Russell, *Race and the Dominant Gaze: Narratives of Law and Inequality in Popular Film*, 15 Legal Stud. F. 243, 243-54 (1991) (presenting images of movies reinforcing and replicating popular culture's view of racial subordination); Robert A. Williams, Jr., *Columbus's Legacy: Law as an Instrument of Racial Discrimination Against Indigenous Peoples' Rights of Self-Determination*, 8 Ariz. J. Int'l & Comp. L. 51, 56-75 (1991) (explaining Supreme Court jurisprudence dealing with

trates the extent of the daily journeys that identify, define, and categorize the *viajera* (traveler) as she traverses worlds. Such constitutive power of the dominant paradigm imbues the diary entries—from the “othering” of my family because of our Spanish-speak, to the dominant (English) monolingualism of the conference itself—a conference of Latina/o lawyers entirely run in English. In this way, my prologue reveals the dominance of the master narrative and underscores the need for a *nueva teoría* that can re/constitute the journeys and their meaning in the travelers’ own voices.

I

WORLD TRAVELING: RACE, ETHNICITY, AND NATIONHOOD

This vignette of world traveling is, of course, part of larger and continuing journeys. The journeys implicate, at group and individual levels, the role and re/presentation of race, ethnicity, color, gender, religion, class, sexuality, and nationhood in navigating through life. Indeed, as the diary entry represents, Latinas/os in the United States, by virtue of their multiple otherness, take daily journeys through these worlds.

However, Latinas also travel the complicated world of sex (meaning both sex and gender) inequality. This complicates Latinas’ journeys because of the double barriers erected by our external relationship to NLW normativity, in which Latinas additionally are disadvantaged within the dominant sex-subordinating paradigm because of the added “otherness” of our race/ethnicity, and by our internal relationship to Latino normativity in which, within the *comunidad Latina*, Latinas are disempowered because of dictated and mandated sex subordination. Both normativities import, and acting in concert exacerbate, barriers of sex inequality/dominance.

Some journeys are smoother than others; all are exhausting. My account, again, is fairly representational of these larger and continuing excursions between and throughout Latina/o worlds. Part of the *trabajo duro* is the completely divergent understandings and perceptions of race, ethnicity, and nationhood between the NLW and the Latina/o universes.

A. *Through the Looking Glass*

My earliest journeys were outside the borderlands. It was in these early years that my normativities—my notions of the race and

American Indians as devolving from medieval European tradition and law of colonization brought by Columbus and as seeking to legitimate cultural racism).

ethnicity narrative as well as my identity formation—were crafted. These earlier journeys are instructive here, and because the worldview that emerged when my identity formation and development occurred in an environment predominantly Latina/o and largely, if not wholly, sheltered from NLW subordination, they are in stark contrast to “American” normativity. These journeys also unravel the process of discovering, understanding, and sometimes internalizing the NLW normativity model.

I was born in Cuba, but left with my family as a small child. *La familia*, including not only my *mami*, *papi*, and little *hermano*, but also *abuela*, *abuelo*, *tía*, *tío*, *dos primos*, and *una prima*, lived a year and a half in Miami, Florida. Families from several large houses converged in a small two-bedroom home where we melded as one.

Upon the family’s arrival in the new world, I was enrolled in second grade at a new school, St. Michael’s. There, I was fortunate enough to encounter Mrs. Armand, a Cuban-born teacher, married to an *estado-unidense*, who took it upon herself to teach English to the Cuban kids (including me) who had begun to arrive in the area speaking not one word of the language. At my school in Cuba, St. Angela Merici Academy, we took English lessons. In fact, I distinctly recall the “See Spot Run” books in kindergarten and the first grade. However, I found that *that* English was not a lot of help with the nun (whose name I do not recall) who was administering what I later learned was a spelling test. She had no patience with my looking around the room, though I was simply trying to figure out what was going on.

Mrs. Armand, who I am now determined to find in order to express my indebtedness and appreciation, taught us English. After about a month I was able to understand the nun. Moreover, it is Mrs. Armand who is responsible for my virtually un(Spanish)-accented English, a veritable boarding pass to many *mundos*.

We were in a new country, a new house, with a new household composition, and a new language to boot—a new language that I shed daily upon arrival at home, where even today (absent monolingual company) we speak only Spanish. Those are a lot of worlds for a little girl.

But those were only worlds I *knew* I was experiencing. Many others I have recognized only much later. World perceptions are wholly dependent upon our universe and its environmental messages and passages.

After the year and a half in Miami, the family (all of it) moved to Puerto Rico, where we lived until my high school graduation. My experience in Puerto Rico was dramatically different from the Latinas/os

raised in the United States. Growing up in Puerto Rico, I was, except for my sex, *normativa*. Speaking Spanish was normal. Being brown (all shades) was not only normal, it was the goal of those NLW (and other foreigners) who visited the island. We traced our ancestry to Spain, Asia, indigenous peoples, and to Africa from where some of our ancestors came as slaves.¹⁴ We were all different, but we were the same: *de Borinquen*. We were the *normativas/os*; the *norte americanas/os*—the “Americans”—were the “other,” the aliens—an interesting perception here *and* there for people all of whom travel with the same U.S. passports.

La Isla was my world, and there my identity was formed, informed, and developed. We all spoke *español*, that was the norm; *inglés* was the foreign tongue. We all ate *arroz y habichuelas* as traditional, not ethnic, food. We were (and are) all shades and colors. In my early journeys I *was* the *normativa*.

To be sure, most of my counterparts raised within the U.S. borders do not share my experience of normativity.¹⁵ Whereas I was the norm, here in the United States my counterparts from their earliest experiences receive the message of being different. Rather than being the standard, from the early stages of identity formation they are bombarded with the message that they are multiple outsiders¹⁶—a judgment grounded upon their color, name, accent, religion, or lan-

¹⁴ Slavery existed in Cuba, see Carlos Márquez Sterling & Manuel Márquez Sterling, *Historia de la Isla de Cuba* 67-75 (1975), and Puerto Rico, see Gordon K. Lewis, *Puerto Rico: Freedom and Power in the Caribbean* 38-39 (1968). In fact, Cuba and Puerto Rico were among the last countries to abolish slavery—Puerto Rico in 1873, see Lewis, *supra*, at 38, and Cuba in 1880, see Sterling, *supra*, at 119—both after the United States had ratified the Thirteenth Amendment in 1865. See Richard B. Bernstein and Jerome Agel, *Amending America: If We Love the Constitution So Much, Why Do We Keep Trying to Change It?* 100 (1993).

¹⁵ Some do, however, and internalize notions of what is the “norm” in amusing ways. For example, one female Chinese-Cuban law student who was raised in Miami and enrolled in the author’s “Latinas/os and the Law” course, during a class on the intersection of race, gender, and ethnicity, raised her hand and stated, “[Y]ou have me totally confused. . . . All my life I thought I was white.” Berta Esperanza Hernández-Truyol, *Indivisible Identities: Culture Clashes, Confused Constructs and Reality Checks*, 2 *Harv. Latino L. Rev.* (forthcoming 1997) (manuscript at 11, on file with the *New York University Law Review*). The confused student obviously *felt* normative and, as the desired norm is white, viewed and identified herself as such even within the United States. See *infra* notes 29-35 and accompanying text for discussion of desirability of whiteness. The student was just starting her travels in the NLW world that would on at least three counts—race, sex, and ethnicity—see her as “other.”

¹⁶ The terms “outsider” and “outsider jurisprudence” have been widely used by Professor Mari J. Matsuda. See Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim’s Story*, 87 *Mich. L. Rev.* 2320, 2323-26 (1989). Professor Matsuda uses the term “outsider” to avoid the label “minority,” which she believes “belies the numerical significance of the constituencies typically excluded from jurisprudential discourse.” *Id.* at 2323 n.14.

guage. Therefore, Latinas/os growing up in the United States do not create or experience a dominant Latina/o identity narrative, but are imbued with the "American" master narrative, one that does not tell *their* stories or describe *their* needs, interests, and concerns.

For Latinas/os in the United States, the dominant paradigm thus predetermines the perspective through which persons are seen, constructed, and exist in a way that subordinates the *identidad Latina*, our agency, and our *potencial*. The image of the person—all the *men* that were "created equal": white, educated, straight, real propertied, slave and wife owning—was established early in the history of this country.¹⁷ Thus presumptions of worth, status, and right to citizenship are ingrained and inherent in the traditional conception of personhood.¹⁸ All others, including Latinas/os, travel in varied worlds that intersect and collide with the predetermined model. The Latina/o and NLW narratives are different, but it takes subtlety, time, and effort to identify, understand, and certainly to experience all their varied dimensions.

For example, the Latina/o identity narrative—for those raised outside and within U.S. borders alike—is based upon ethnic/national origin/social/cultural identity.¹⁹ For the Latinas/os outside the United States, this is the dominant identity paradigm. However, for Latinas/os within the United States, their story is subordinated to the starkly contrasting "American" model in which race plays a nuclear, primary, defining, and pivotal role. Consequently, it is not surprising, as the Part that follows details, that Latinas/os' construction of racial categories is quite divergent from the United States' paradigmatic white/black lines, and that these varying constructions cause much confusion to Latinas/os within these borders.

Today, traveling back through the looking glass, it is apparent that as a Latina whose identity formation occurred in an environment where, except for my sex, I was the norm, I was wholly unequipped to

¹⁷ See Ian F. Haney López, *White by Law: The Legal Construction of Race* 39 (1996) (discussing whiteness requirement for citizenship). See generally Wildman, *supra* note 13 (discussing historic white male privilege).

¹⁸ See Haney López, *supra* note 17, at 39.

¹⁹ See Clara E. Rodríguez, *Puerto Ricans Born in the U.S.A.* 66 (1989) (stating that "Hispanics have a different conception of race, one that is as much cultural or 'social' as it is racial"). To be sure, this is all consonant with the recent literature positing that race is a social construct allowing for distinctions between biologic/taxonomic and social definitions as well as the consequences of perceived socially constructed racial differences. See, e.g., Haney López, *supra* note 17, at 111-33 (discussing legal construction of white racial identity and arguing that regardless of powerful and pervasive role race plays in our society, races are still only human inventions); Rodríguez, *supra*, at 73 (discussing race as social category); Cornel West, *Race Matters* (1993) (discussing race in America and flaws in American society as rooted in historic inequalities and longstanding cultural stereotypes).

travel the U.S. dominant-culture landscape. I had no comprehension of the NLW “othering” scheme. Still today, Latinas/os being raised in a predominantly Latina/o environment—an environment that celebrates rather than deprecates Latina/o culture, *español*, multilingualism; places such as Puerto Rico or even Miami, *within* the U.S. borders—would not understand that, based on NLW standards, they are others.²⁰

Journeying into and through the United States has been an education, which in turn can and should inform the antisubordination agenda of LatCrit theory and theorists. I have learned about “otherings” and experienced (although not fully internalized) the NLW re/vision of my normativities of race, ethnicity, and identity. In preparing this Essay, I therefore re/visited a world I did not know existed when I lived it.

In doing so, I remembered an experience from when I was a young child, recently arrived in Miami, from Cuba. I had learned through my other-lingualism that I was Cuban in “America.” However, it is now plain that I was not yet aware of what this experience meant.

The journey I recalled took place when *mami*, *mi hermanito*, and I went to Burdines, a department store in downtown Miami. I inherited *mami*’s darker, olive complexion, earning me the nickname of *mulata*. My brother, unlike me, is very fair skinned. At that time, at the age of four, he had white-blond hair and skin so fair that he had to be carefully protected from the sun.

I remember *mami* had us in tow, one of our hands in each of hers. From across the room I saw another family of three, replicating ours—mom, little (older) girl, and little boy—walking in our direction. I saw the little girl tugging her mother towards the water fountain, saying she was thirsty. I remember her mother tugging her away saying, “That one is not for us.”

I was confused. I had just had a drink from that very fountain. I recall looking back and only for the first time noticing the “whites only” sign. Even after having seen it, I still did not quite understand as, over time, back at Burdines I drank again and again.

Today, I understand. The *Hernández v. Texas*²¹ “*hombres aquí*” sign translates; it facilitates the knowledge that the sign at Burdines was meant for me too. I am certain, however, that my mother still

²⁰ See *supra* note 15.

²¹ 347 U.S. 475 (1954) (referring to toilets on courthouse grounds, one marked “colored men,” other marked “*hombres aquí*” (men here)). This instance of discrimination was invoked by petitioner Hernández in order to establish a showing of discrimination against Mexicans in the context of a jury exclusion discrimination claim.

today would not have any notion, not the vaguest clue, that the sign meant us too. Having been raised in the *cultura Latina*, the black-white paradigm and its "common understandings" are not familiar; monolingualism is alien; being an other *because* of being Latina is incomprehensible. After years of learning, I am now consciously aware of, although I have neither assimilated nor grown accustomed to (and doubt I ever will), the NLW "othering" hierarchy, a plot that, under the guise of norms, marginalizes others.

B. *The Divergent Racial Paradigms*

The Latina/o and "American" constructions of racial normativities are polar opposites. In the United States the central, essential, axiomatic paradigm that courts religiously accept, believe in, and impose is the "one drop" rule.²² This model dictates that, regardless of phenotype, one drop of black blood makes a person black. There is no amount of whitening that can make you the normative.

Gunnar Myrdal has artfully described the subjective point of view—the dominant NLW paradigm and its socially constructed presumptions that seek to pass as objective truth—underlying the "one drop" principle.

The "Negro race" is defined in America by the white people. It is defined in terms of parentage. Everybody having a *known* trace of Negro blood in his veins—no matter how far back it was acquired—is classified as a Negro. No amount of white ancestry, except one hundred percent, will permit entrance to the white race.²³

The case law unmasks the patent racist underpinnings of the definition:

"[W]hite persons" within the meaning of the statute are members of the Caucasian race, as Caucasian is defined in the *understanding of the mass of men*. The term excludes . . . American Indians. . . . Nor is the range of the exclusion limited to persons of the *full blood*. . . . [M]en are not white if the strain of colored blood in them is a half or a quarter, or, not improbably, even less, the governing test always being that of *common understanding*.²⁴

In contrast to this Supreme Court sanctioned view of race, *caribeñas/os* subscribe to the notion of *blanqueamiento*²⁵ (whitening)—ironically also a "one drop" rule of sorts. However, under the

²² See Haney López, *supra* note 17, at 27 (describing court constructed definition of "white" through process of negation, systematically identifying who was non-White").

²³ Gunnar Myrdal, *An American Dilemma* 113 (2d ed. 1962).

²⁴ *Morrison v. California*, 291 U.S. 82, 85-86 (1934) (emphasis added).

²⁵ See Eduardo Seda Bonilla, *Requiem Por Una Cultura* 52 (1970) (noting that in Latin America there is tacit acceptance of notion of *blanqueamiento*).

caribena/o perspective, one drop of *white* blood starts you on the route to acceptability also constructed as whiteness.²⁶ Only this *caribena/o* approach to race can explain statistical reports that approximately 95% of persons identifying themselves as Latina/o also identify themselves as white.²⁷ Considering that, "[a]s a matter of fact most Latinas/os are racially mixed, including combinations of European white, African black, and American Indian,"²⁸ an NLW outlook would yield sensationally contrasting results. Indeed, by NLW standards, it is an impossibility that 95-97% of Latinas/os are "white," although this is Latinas/os' own reality.

Although Latinas/os and NLW have dramatically different racial and ethnic self-perceptions/identifications, the master narrative—the NLW rendition, as the creating, implementing, and enforcing voice of the public discourse—subordinates the Latina/o version. Such imposition of the dominant NLW perspective as *the* accepted (and acceptable) worldview causes much confusion for and about Latinas/os in the United States.

To be sure, the United States' version of race as applied to Latinas/os has led to anomalous results. For example, a black Cuban, but not a "white" Cuban, has been said to be able to make a claim of racial discrimination.²⁹ Interestingly, another court found that Cubans could be considered a nonwhite racial group and concluded that it could not rule out that discrimination against Cuban Americans was racially based.³⁰ Certainly, if "Cuban" is a racial category, any Cuban should be entitled to make a race-based claim—racial discrimination includes discrimination against whites³¹ and, as such, should

²⁶ See Lewis, *supra* note 14, at 226, 227 ("whereas in the United States one drop of 'colored' blood designates one as a Negro, in Latin America and the Caribbean one drop of 'white' blood can launch an individual . . . to social acceptance as white" and results in "an amalgative process between the races").

²⁷ Statistical Handbook on U.S. Hispanics 2 (Frank L. Schick & Renee Schick eds., 1991) (providing no basis for estimate).

²⁸ Gerardo Marín & Barbara Van Oss Marín, *Research with Hispanic Populations* 2 (1991). In the 1980 census, only 3% of Latinas/os identified themselves as black. See *id.*

²⁹ Compare *O'Loughlin v. Procon, Inc.*, 627 F. Supp. 675 (E.D. Tex. 1986) (treating black Cuban's claim as race-based under 42 U.S.C. § 1981), *aff'd mem.*, 808 F.2d 54 (5th Cir. 1986), with *Mouriz v. Avondale Shipyards, Inc.*, 428 F. Supp. 1025 (E.D. La. 1977) (dismissing white Cuban's § 1981 claim for lack of racial basis).

³⁰ See *Cubas v. Rapid Am. Corp.*, 420 F. Supp. 663 (E.D. Pa. 1976) (holding that Cuban-born American citizen stated cause of action under civil rights statute protecting nonwhites).

³¹ See, e.g., *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978) (invalidating state medical school affirmative action admissions policy on grounds that such policies violated white male plaintiff's constitutional rights under Equal Protection Clause); *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996) (asserting state university affirmative action admissions program violated equal protection rights of nonminority white applicants).

not prevent a Caucasian who happens to be of Cuban descent (as the *Mouriz* court described the plaintiff) from bringing a racial discrimination claim.³²

From the Latina/o perspective, these racial categories lead to bizarre results and produce confusing experiences. Clara Rodríguez vividly captures and describes the puzzlement and quandaries effected by this dominant normative outlook in her review of Piri Thomas's book, *Down These Mean Streets*,³³ a book set in the late 1950s or early 1960s about second generation *puertorriqueñas/os* in the United States. Professor Rodríguez describes the book's text as follows:

The narrator is a second-generation Puerto Rican, raised in East Harlem. He gets involved with drugs, then crime, and ends up in prison in Lexington, Kentucky. It is here that he has his "awakening." He is in line, waiting for chow, with a fellow Puerto Rican. The line divides into two, the Negro line and the White line. The main character is engrossed in conversation and not really aware of the division, or of the basis for the division. He follows his Puerto Rican friend in the line. Suddenly a guard stops him and asks, "Where do you think you're going?" He is pushed into the Negro line and separated from his Puerto Rican "brother."

. . . Thomas's . . . account[] reflect[s] the imposition of the race order and identification by race and not by culture. . . . [I]n Piri Thomas's novel, there is none of the quiet anger or resolute acceptance. . . . Piri Thomas's character questions: Is this the way the world really is? Is this what I am? Then I am not what I've always thought I was. Anger and rage result from the denial of his identity, as he perceives it. A purely racial identity is imposed and this leads to perceptual dissonance.³⁴

Of course, in a jail in Puerto Rico, he could have followed his *hermano puertorriqueño* in line. In *La Isla* they both just would have been traveling the world of prisons. In the United States, the journey was in racially defined worlds.

Significantly, Latinas'/os' adjustments to their existence within the majoritarian, binary, racialized world has an impact on their self-perceptions,³⁵ evidencing the constitutive effect of the dominant paradigm and the need for a LatCrit theoretical model that can de-

³² Interestingly, it appears that the status of Cubans has generated confusion even within *la comunidad Latina*. See Berta Esperanza Hernández-Truyol, *Building Bridges—Latinas and Latinos at the Crossroads: Realities, Rhetoric and Replacement*, 25 Colum. Hum. Rts. L. Rev. 369, 411 (1994) (recounting how author was told another "cubana" law professor did not count as Latina).

³³ Piri Thomas, *Down These Mean Streets* (Vintage Books 1991) (1967).

³⁴ Rodríguez, *supra* note 19, at 57-58.

³⁵ See *id.* at 62 ("Puerto Ricans in the United States appear to be adopting the North American conception of race for their own racial self-definition.").

subordinate, re/present, and re/conceptualize Latina/o identity. For instance, studies on first and second generation *puertorriqueñas/os*, in which an interviewer both classified persons in a study group in terms of color and asked the participants to classify themselves, have shown that "[t]here was persistent perceptual dissonance with regard to racial classification."³⁶ Exhibiting what has been labeled the "browning tendency,"³⁷ many respondents classified themselves as darker than the interviewer saw them, although a few, reflecting the Latina/o *blanqueamiento* perspective, viewed themselves as lighter than they were seen. In all cases, the respondents were browned or whitened by virtue of the dominant black/white dichotomy in which they now journeyed.³⁸

It is, of course, ironic that both with notions of *blanqueamiento* and the United States' "one-drop" rule, the goal is still whiteness. Thus, the fact that the Latina/o self-identification is ethnic/cultural rather than racial does not signify that there are no racial barriers within Latina/o communities.³⁹

From the Latina/o viewpoint, the desirability of whiteness represents the internalization by the colonized of the colonizers' predilections.⁴⁰ Race-based distinctions, imposing a hierarchy where whiteness is the coveted hue, is traceable to early Spanish colonizers'

³⁶ Id. at 60. "[A] substantial proportion of respondents did not see themselves as the interviewer saw them. Objective perceptions—how they were seen—did not correspond with subjective perceptions—how they saw themselves." Id.

³⁷ Id. at 61.

³⁸ See id. at 60-61.

³⁹ For example, just like in English, kinky hair is *pelo malo* (bad hair). In fact, as a colleague described at a recent conference, we even have a "test" to see if hair "passes": the ceiling-fan test. Only in a tropical climate does this make sense. If you sit under a ceiling fan, and your hair "moves"—blows with the created wind—your hair is good. See Gloria Anzaldúa, *En rapport*, In *Opposition: Cobrando cuentas a las nuestras*, in *Haciendo Caras*, supra note 2, at 142, 143.

And it is exactly our internalized whiteness that desperately wants boundary lines (this part of me is Mexican, this Indian) marked out and woe to any sister or any part of us that steps out of our assigned places, woe to anyone who doesn't measure up to our standards of ethnicity.

Id. The development of the notions of racism within the Latina/o community, however, is beyond the scope of this Essay.

⁴⁰ See id. at 142, 143 (noting that in "neocolonialist" phase, while colonizers no longer assert direct control over native cultures, Latinas/os have internalized white system of values, attitudes, morality, and modes of production).

We have been indoctrinated into adopting the old imperialist ways of conquering and dominating, adopting a way of confrontation based on differences while standing on the ground of ethnic superiority.

...
... External oppression is paralleled with our internalization of that oppression. ... They have us doing to those within our own ranks what they have done and continue to do to us - *Othering* people. ... The internalization of

views on race, which were in line with the prevailing "American," NLW perspective.⁴¹ In New Spain (Mexico), the Spanish white minority—viewed as xenophobic based on their expulsion of Jews and Arabs from Spain—sought to identify "purenness of blood."⁴² To achieve this end, during the colonization period the Spaniards in Mexico (as well as in other places) established a complex system of racial categorization that included the prohibition of public office holders from having a "taint" of Indian, Arabic, or Jewish blood.⁴³ Those with "tainted" blood were denied entry to schools and universities, and mestizas/os were specially targeted for discrimination.⁴⁴

Notwithstanding the colonizers' structures, in Latin America and the Caribbean, the reality of racial admixtures developed the concept of "race" as a fluid continuum, rather than the absolutist black/white paradigm.⁴⁵ This fluid model, where the construction of race is imbued with values based upon class, education, economics, and culture, lacks rigid borders (such as a "one-drop rule") and allows traveling in and out of categories. Outside our communities, with the application of the dominant norm regardless of whether a Latina/o could "pass," s/he is nevertheless "othered" *because* of her/his *latinidad*.

Thus, the position of Latinas/os in the United States is compounded and confused by the juxtaposition of a strictly bipolar NLW racial construct that has effected the racialization of ethnicity, to our more fluid ethnic/cultural paradigm. To be sure, Latinas/os racial admixture and *blanqueamiento* self-identification process must be enigmatic to and disruptive of the NLW's formally neat racial order. *Puertorriqueña/o* migrants arriving and side by side disembarking with a "Negro-appearing brother and his Anglo-appearing sister attending the same school"⁴⁶ must confuse those positioned within the dominant

negative images of ourselves, our self-hatred, poor self-esteem, makes our own people the *Other*.

Id.; see also Margaret Montoya, *Máscaras, Trenzas y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 Harv. Women's L.J. 185, 192-96 (1994) (citing pressures on Latinas/os to assimilate into and adopt norms of Anglo culture yet still retain links to own culture and heritage).

⁴¹ See *supra* notes 22-28 and accompanying text for discussion of NLW perspective on race.

⁴² David E. Hayes-Bautista, *Identifying "Hispanic" Populations: The Influence of Research Methodology Upon Public Policy*, 70 Am. J. Pub. Health 353, 354 (1980).

⁴³ See *id.* at 354; Rodríguez, *supra* note 19, at 49 (discussing emphasis on racial superiority of white Europeans during Spanish colonization period).

⁴⁴ See Hayes-Bautista, *supra* note 42, at 354 (discussing how in colonial Latin America, purity of blood had to be maintained in order to prevent Indians and mestizos from claiming rights of governance).

⁴⁵ See Rodríguez, *supra* note 19, at 52-53 (discussing "black-white continuum" that exists in Latin America).

⁴⁶ *Id.* at 51.

paradigm. In order to adjust, given the NLW dominance of the discourse, these siblings are *both* rendered not white by virtue of one of their appearances. The culture-based normativity that would dominate the *puertorriqueñas/os* as subjects cedes to the racial identification that defines them as objects of the majority's observation.⁴⁷ Their racialization in turn racializes their parents, grandparents, siblings, and extended families, creating an entire community of "others." The following Part explores the collapsing by the dominant construct of the concepts of race and ethnicity—categories that, while plainly different, are re/constructed and re/interpreted by the dominant construct as synonyms in order to empower their marginalizing effect.

C. *Conflations and Confusion of Race, Ethnicity, and National Origin*

The normative's confusion with (and consequent conflation of) the different concepts of race, national origin, and ethnicity results in a myopic construct that, as shown above, ethnicizes/nationalizes race and racializes ethnicity/national origin.⁴⁸ Official government studies and data manifest the early chaotic convergence of racial and ethnic (and often national origin, culture, and language) universes as well as their social and political underpinnings.

The 1930 census, rather than classify persons of Mexican ancestry as a national origin category separate from Anglo/a-Saxon, or categorize "Hispanics"/Latina/o as a separate ethnic category from Anglo/a-Saxon, classified persons of Mexican descent as a racial category separate from "white." Yet, the 1940 census enumerated "Hispanics" as "white,"⁴⁹ a change in the census categories that resulted from politics

⁴⁷ See, e.g., *id.* at 52.

[I]n Puerto Rico, racial identification was subordinate to cultural identification, while in the United States, racial identification, to a large extent, determined cultural identification. . . . This is not to say that Puerto Ricans did not have a racial identification, but rather that cultural identification superseded it. The system of racial classification in Puerto Rico was based more on phenotypic and social definitions of what a person was than on genotypic knowledge about a person. In other words, physical and social appearance were the measures used to classify, rather than the biological-descent classifications . . . used in the United States.

Id. (footnotes omitted).

⁴⁸ See Gloria Sandrino-Glasser, *Los Confundidos: De-Conflating Latinas/os' Race and Nationality* 42-65 (1996) (unpublished manuscript, on file with the *New York University Law Review*) (discussing how majority's tendency to universalize categories of selves and foreign others warps perceptions of those foreign categories).

⁴⁹ See Marín & Marín, *supra* note 28, at 20 (noting that "'Hispanic' as an ethnic label is the product of a decision by the Office of Management and Budget (OMB) in 1978 to operationalize the labels as '[a] person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race'").

and international relations: the Mexican government had protested against a nonwhite designation for persons of Mexican descent.⁵⁰ Such foreign opposition was not new. Early state statutes failed to classify Mexican Americans as nonwhite because "such a classification would have presented diplomatic problems with Mexico."⁵¹

Regardless of the official classification scheme, in *Hernández v. Texas*,⁵² the Supreme Court confirmed the "American" confusion with respect to the different classifications of race, ethnicity, and national origin. In *Hernández*, the Court concluded that the petitioner met the burden of proof for a group discrimination claim by establishing that persons of Mexican descent were a separate class from "whites."⁵³ The Court's collapsed view of race and ethnicity echoes the congressional perspective, expressed during floor debate, that labeled Mexicans as "'little brown peons'" who are members of a different race.⁵⁴ Such early developments plainly establish the perception of persons of Mexican ancestry as nonwhite, notwithstanding their formal classification as white.⁵⁵

Courts' references to other nationality/national origin categories as racial categories—the Puerto Rican, Cuban, and Mexican races, for example—confirm their conflated view of race and ethnicity/national origin.⁵⁶ More recently, the Supreme Court reiterated, ratified, and

⁵⁰ See Gary A. Greenfield & Don B. Kates, Mexican Americans, Racial Discrimination and the Civil Rights Act of 1866, 63 Cal. L. Rev. 662, 683, 699 n.197 (1975) (discussing change in census category).

⁵¹ Id. at 683.

⁵² 347 U.S. 475 (1954).

⁵³ See id. at 479.

⁵⁴ Immigration from Countries of the Western Hemisphere, 1928: Hearings on H.R. 6465, H.R. 7358, H.R. 10955, H.R. 11687 Before the House Comm. on Immigration and Naturalization, 70th Cong. 28 (1928) (remarks of Rep. Box of Texas) (quoting Lothrop Stoddard, *Re-Forging America* (1927)), cited in Greenfield & Kates, *supra* note 50, at 698; see also Haney López, *supra* note 17, at 49-77 (discussing "prerequisite cases" that imposed racial restrictions on naturalizations); id. at 111-53 (discussing legal construction of race).

⁵⁵ See Greenfield & Kates, *supra* note 50, at 683 (referring to classification of Mexicans under state statutes as white).

⁵⁶ See *infra* Part I.D. for a discussion of how this conflation renders Latinas/os alien.

Interestingly, and most likely because of the dominance of the United States and Western Europe in crafting international human rights documents, this collapse of race and ethnicity also occurs in the international human rights sphere. See, e.g., International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Dec. 21, 1965, art. 1, § 1, 5 I.L.M. 352 (entered into force 1969). The Covenant defines racial discrimination as

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

endorsed this outlook by ruling that Arabs and Jews alike could seek constitutional protections against discrimination based on race.⁵⁷ Thus, in the dominant racial paradigm, what is *called* race in reality translates to "other," a non-NLW, and includes, as the above examples show, varied ethnic and national origin categories. Such re/construction of race, a classification that is dependent upon the "common understanding" of the dominant community, becomes a powerful tool in the master narrative as it defines who exists as a full member of society and who subsists as a quasi-citizen.

These conflated categorizations are still commonplace, as evident in the self-identification classifications currently found in census and other documents. Until recently, the check-off boxes were labeled Black (not of Hispanic origin), White (not of Hispanic origin), and Hispanic. Today, the Hispanic tag includes a parenthetical noting that "(Hispanics can be of any race)."⁵⁸ Either way, the flaw of the system lies in the fact that Hispanicity is a category that denotes ethnic/national origin or ancestry. Black and white, on the other hand, are racial designations. If the aim of the system is to obtain racial and ethnic data, it fails because, for "Hispanics," race remains unreported, as does ethnicity for blacks and whites. If, on the other hand, the goal is to obtain either racial or ethnic identification, it is equally flawed as they are neither mutually exclusive nor mutually dependent categories.

This U.S. scheme is particularly perplexing to Latinas/os not raised in the United States and to whom racial and ethnic/national origin categories are plainly different items. I remember not so long ago, after I had started my travels through re/visioning normativities of race, ethnicity, and identity, I saw *papi* filling out a form in which the categories were typical: White (not of Hispanic origin), Black (not of Hispanic origin), and Hispanic. My dad, following his own normative views, checked "White." I pointed out to him that such was an inappropriate selection as he is Latino and, given choices presented

Id. Of course, the proposed LatCrit paradigm should avoid such inappropriate conflation of ethnicity and national origin with race.

⁵⁷ See *St. Francis College v. Al-Khazrazi*, 481 U.S. 604, 613 (1987) (recognizing Arab woman's racial discrimination claim under 42 U.S.C. § 1981); *Shaare Tefila Congregation v. Cobb*, 481 U.S. 615, 617 (1987) (finding that Congress intended to protect Jews through adoption of 42 U.S.C. § 1982).

⁵⁸ Scott Shepard, *One Nation, Indivisible? The Answer May Not Simply Be Black-And-White*, *Atlanta Const.*, Aug. 3, 1997, at 1R (referring to U.S. Census forms); see also *Marín & Marín*, *supra* note 28, at 20 (pointing out that Hispanic label attaches to certain nationalities regardless of race); Sam Roberts, *Who We Are: A Portrait of America Based on the Latest U.S. Census* 74 (1993) (noting that "[p]eople of Hispanic heritage are clustered according to which country they came from").

and the definitions provided, could not claim the "White" label. He noted that he was white; I insisted he was Latino. He ended up checking *both* boxes—making him a Hispanic White (not of Hispanic origin). He could not, from his point of view, understand this way, foreign to him, of classifying people. I am certain that he still does not appreciate the fact that within the normative paradigm he *cannot* be white *because* he is Latino. In making his own rules and checking two boxes, he simply accepted his own view of himself and rejected the limitations, alien to him, of a one-box model.

My water fountain episode, dad's unboxed categories, and Piri Thomas's prison story are all silhouettes⁵⁹ that attest to the divergent social constructions, perceptions, and experiences regarding race and ethnicity/national origin of Latinas/os and NLWs. These different worldviews reinforce the need for a LatCrit theoretical movement that accepts, integrates, understands, and appreciates the *perspectiva*

⁵⁹ Sarah Williams, a feminist anthropologist of anthropologists, calls silhouettes experiences that are not "representations of objective reality" but rather "shadows." Sarah Williams, *Abjection and Anthropological Praxis*, 66 *Anthropological Q.* 67, 71 (1993). In this article, Williams relates a silhouette of her fieldwork at an Australian university anthropology department seminar that is pertinent to a study of Latinas/os. Williams's shadow involved a noted New York anthropologist who was making a presentation. The presenter had "mediated the politics surrounding the anthropological representation of a so-called 'lost tribe' of Australian Aborigines who were 'discovered' in the Central Desert in 1984." *Id.* at 71.

Someone from the audience challenged the utility of the report, inquiring who would read it and questioning why an academic would write "that the so-called 'lost tribe' of Australian Aborigines was not a lost tribe nor, contrary to media belief, 'a people walking out of the Paleolithic.'" *Id.* Noting that probably only academics would read his report, as it was not "media worthy," the presenter nonetheless told the audience that there was a "young Aboriginal man who [was] reading his book—the anthropologist's ethnography of the young man's culture." *Id.* At that juncture the moderator "joke[d] about more Trobriand Islanders reading Malinowski to determine who they are." *Id.* While other attendees laughed at the joke, Williams became "lost in the conflicting affects of the joke and the laughter," as she saw the student who *was* a Trobriand Islander. *Id.* So Williams, the ethnographers' ethnographer, embraces her silhouette:

Am I to envision this Trobriand Islander dangling another anthropological simulacrum . . . ? Or, is the moderator being dangled by Malinowski, who from his grave literally (that is, textually) does dangle "the Trobriand Islander?" How can this joke be a joke? The laughter evokes abjection. For me, an anthropologist of anthropologists, the images and words and people surrounding me are: divisible, foldable, and catastrophic. . . . The department is supposedly proud to be training the first native Trobriand Islander anthropologist. Furthermore, this student's principal advisor is a Malinowski expert. *Is* this would-be native anthropologist of the Trobriand Islands reading the texts of Malinowski to determine his identity? Or is he reading Malinowski to learn how anthropologists have represented his culture? Is there a difference? Does it matter?

Id. at 71-72.

I thank Margaret Montoya, Professor of Law at University of New Mexico and a dear friend, for introducing me to Williams, Trobrianders, and Malinowski.

Latina, rather than subordinating and silencing it. The attention that has been paid to Latinas/os by Latinas/os underscores the revelation of these conflicting and digressing worldviews and the need for *nuestras teorías*.

Piri Thomas's character's prison adventure reflects how the majority-created, dominant model in effect teaches, disperses, and enforces the majority's version of knowledge, a rendition imposed on the alien while disguised as objective reality.⁶⁰ The imposition of a dominant paradigm—as alien to Thomas's character as it was to my father—leads to the confusion that Thomas's character reveals. It was through Thomas's Latino eyes that his character questioned whether the racial division he encountered was the way the world really works, an inquiry that resulted in a basic questioning of his own identity. He could not quite understand how he could not be who he had always thought he was.

Jesus Colon's stories of his life, on the other hand, are built upon his understanding—the morsel of knowledge that Piri's character did not have—that his world *within* the United States would be defined in terms of his color. The comprehension and knowledge (to him) of the “other's” governing model, however, fails to change Colon's own worldview. His book, *A Puerto Rican in New York*,⁶¹ discusses the color issues the author himself confronted. The author depicts the foundational, structural differences in the way he interacts *en el mundo*. Yet, while he accepts the world as he finds it, he acknowledges that such is not the way he sees it.⁶² Not ceding to the “objectivity” of the “reality” that imposes race as the commanding “truth” in everyday life, Colon still makes ethnicity the salient feature in his world. Thus, while he has knowledge and understanding of the controlling and commanding NLW world he travels, he retains and records his own reality using “[e]dges—boundaries, borderlands, mar-

⁶⁰ See *id.* at 67 (expressing concern about how anthropologists “produce, use and disseminate” knowledge).

⁶¹ Jesus Colon, *A Puerto Rican in New York* (1975) (containing vignettes based on author's experiences in New York).

⁶² See Rodríguez, *supra* note 19, at 56-58 (relating reminiscences of one Puerto Rican who migrated to New York as adult). Still others have responded to the racial categorizations in the United States with anger, resistance, and confusion, depicting the tension between their self-perceptions and others' perceptions of them as “other.” See *id.* at 58 (discussing Edward Rivera's Family Installments: *Memories of Growing Up Hispanic* (1983), in which friendship between Santos, a *puertorriqueño*, and another *puertorriqueño* with “black” features cools after Santos insults “black” friend with racial remark, and after both are accosted by gang of black youths that allows “black” Puerto Rican to go, but not Santos).

gins—[as] places . . . [to] remember, reconstruct and construct anew the imaginative power of cultures and identities.”⁶³

These *cuentos*—images, profiles, contours of Latina/o life—effectively depict the divide between Latinas/os’ ethnic, racial, national origin, and language version of normativity and the NLW’s conflated, myopic, and confused re/interpretation of these identity components. To be sure, as the studies on “browning” expose, and as Colon’s writing discloses, Latinas/os in the United States tend eventually to decipher, acclimate to, and sometimes internalize the dominant set of rules to reflect the imposed otherness.

These silhouettes, and many others like them, emphasize the schism between the Latina/o and NLW realities. Latinas/os in the United States are constructed by rules which, in their own worldview, are meaningless, incomprehensible, foreign. Must my dad, Piri’s and Colon’s characters, and I read, understand, and assimilate the NLW text of normativity to determine our identities? Or are the experiences simply informing us as to how the dominant paradigm has re/constructed and re/presented our identities? Is there a difference between who we *are* and the majority’s re/vision of who we are, in particular when the dominant construct is the accepted text? Are we not who we think we are but who the dominant paradigm makes us? Moreover, even understanding the NLW paradigm does not change the reality that Latinas/os in the United States are much like Malinowski’s Trobrianders—defined by a system they did not make, in a language that is not theirs, in a context that oftentimes is wholly unfamiliar. The need to manifest an understanding of the social construction, relativist subjectivities, contingencies, and contextualities of identity is the foundation for a LatCrit model that will embrace and support a re/presentation of Latina identity, issues, concerns, and perspectives.

D. Latinas/os as Alien: Foreignness and Language

One of the consequences of the NLW dominant paradigm’s conflation of race, ethnicity, and national origin is the prevalent view it has engendered in “American” society of Latinas/os as alien⁶⁴—other-

⁶³ Williams, *supra* note 59, at 68.

⁶⁴ See Haney López, *supra* note 17, at 37-47 (discussing historical nativism and discrimination inherent in United States immigration and naturalization laws and effects of laws on both racial composition and racial definitions in United States); see also Kevin R. Johnson, Aliens and the U.S. Immigration Laws: The Social and Legal Construction of Nonpersons, 28 U. Miami Inter-Am. L. Rev. 263 (1996-97) (analyzing how term “alien” is used to refer to noncitizens, suggesting that terminology is used to justify harsh treatment, and contending that the term has become “code” for noncitizen of color); Neil Gotanda, “Other Non-Whites” in American Legal History: A Review of *Justice at War*, 85 Colum. L.

worldly, if one is to contemplate the true, dehumanizing meaning of the "illegal alien" moniker—not "real" Americans, notwithstanding their long established roots within the U.S. borders.⁶⁵ The current immigration⁶⁶ and welfare⁶⁷ reform legislation are prime examples of the view of Latinas/os as foreign others—those "little brown peons" who

Rev. 1186, 1190-92 (1985) (reviewing Peter Irons, *Justice at War* (1983)) (noting linkage of nonblack persons of color with foreignness).

The othering of Latinas/os is, in part, history repeating itself. In the 1880s a new tide of immigrants from Eastern and Southern Europe, namely Italians, Slavs, Poles, Russians, Hungarians, Greeks, and Jews, broke the Nordic circle of Western and Northern Europeans, triggering antiforeign sentiments centering on cultural prejudice and intolerance. See John Higham, *Send These to Me: Jews and Other Immigrants in Urban America* 39-41 (1975) (discussing prejudicial attitudes toward new immigrant masses). By then-accepted standards, "the masses of southern and eastern Europe were educationally deficient, socially backward, and bizarre in appearance." John Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925*, at 65 (2d ed. 1988). It is interesting, for example, that Italians, foreigners once derided, now blend into the cultural "melting pot" being described most marginally as ethnic whites. See, e.g., *id.* at 66 (noting how derisive term "Dago" used to refer to Italians). Italians, Irish, and Jews bore the brunt of early nativism. Italians, for example, were often derisively described:

The Italians were often thought to be the most degraded of the newcomers. They were swarthy, more than half of them were illiterate, and almost all were victims of a standard of living lower than that of any of the other prominent nationalities. . . . Also, they soon acquired a reputation as bloodthirsty criminals.

Id. Also perjoratively referred to as "WOPs" (without papers), Italians were sometimes victims of lynching parties, mob beatings, and riots. See *id.* at 90.

⁶⁵ That there is a negative connotation to non-Western European alienness (as noted above, regardless of *real* citizenship) is not a myth. I was working with a lawyer on litigation involving French and Swiss clients. I was the *only* Latina/o out of over 400 lawyers. My name, if nothing else, is a dead giveaway that I am Latina, which, by the way, got me great services from the secretaries and the photocopy, mail delivery, and litigation support departments—all of which were staffed with Latinas/os or other persons of color.

I worked closely with another lawyer—let's call him Jack. There were frequent overseas calls to France and Switzerland that I conducted primarily because I *parle Français*. Jack understood some French and I translated a great deal for him. Interestingly enough, after several weeks of working together in this environment, he stopped the shop talk after one of these phone calls and without transition—just when I thought he was going to ask whether we should arbitrate in Holland or sue here—he looked at me squarely in the eye and said, "Now, Berta, you don't really consider yourself Hispanic, do you?" I, uncharacteristically enough, was speechless. Before I had recovered sufficiently to respond, he said, "I mean, I don't think of you as Hispanic; I think of you more as European, you know, Spanish," clearly distinguishing between an exotic, Western European foreigner and an undesirable one from the South. I guess that nexus to Europe created the legitimacy he needed to accept me in his world of European practice, the legitimacy to account for my successful interaction with European clients in *their* tongues and nations.

⁶⁶ See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, 110 Stat. 3009 (codified in scattered sections of 15 U.S.C.) (strengthening border patrols to curb undocumented immigration and denying more public aid to documented immigrants).

⁶⁷ See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified in scattered sections of 8 U.S.C. and 42 U.S.C.) (limiting legal immigrants' access to medical services and public assistance).

try to take advantage of, without being entitled to, "American" jobs and health, education, welfare, and social security benefits.

That this nativistic animus, based upon Latinas/os' perceived alienness, is targeted indiscriminately at *all* Latinas/os, regardless of citizenship,⁶⁸ is apparent in the raids taking place in Texas. All Mexican-looking people—American citizens of Mexican ancestry and foreigners alike—are rounded up by *la migra* (INS officers) to be shipped out of the U.S. borders.⁶⁹ It is also manifest in the Northeast where *puertorriqueñas/os*, citizens by birth (like many of their Mexican American counterparts in Texas), are being denied jobs because, although they produce passports and birth certificates, they cannot produce a green card⁷⁰—a document only noncitizens can obtain.

The Spanish language in Latinas/os' heritage, often carried forward in our names regardless of our ability to speak it, is a factor that further contributes to the foreigning of Latinas/os.⁷¹ Beyond names, Spanish colludes to effect the alienness of Latinas/os if they are Span-

⁶⁸ Asian American citizens also encounter this "foreignness" border. See Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 Cal. L. Rev. 1243, 1258-64 (1993) (discussing Asian American stereotype as "model minority"); Pat K. Chew, *Asian Americans: The "Reluctant" Minority and Their Paradoxes*, 36 Wm. & Mary L. Rev. 1, 33-38 (1994) (describing white Americans' classification of Asian Americans as foreigners); Gotanda, *supra* note 64, at 1188-92 (tracing history of cases concerning racial classification of Asian Americans).

The exclusion of Asian Americans and anti-Asian sentiments also have deep historic roots. Japanese were vilified as untrustworthy outsiders to the extent of being interned in camps. Anti-Asian sentiments led to their exclusion. See, e.g., Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58 (as amended and extended in 1884, 1888, 1892, 1902, and 1904), repealed by Act of Dec. 17, 1943, Pub. L. No. 78-199, 57 Stat. 600.

The constitutionality of such exclusion was upheld by the Supreme Court in the Chinese Exclusion Case, *Chae Chan Ping v. United States*, 130 U.S. 581 (1889). For a critical review of such exclusion, see Louis Henkin, *The Constitution and United States Sovereignty: A Century of Chinese Exclusion and its Progeny*, 100 Harv. L. Rev. 853, 859 (1987) ("The *Chinese Exclusion* doctrine and its extensions have permitted, and perhaps encouraged, paranoia, xenophobia, and racism, particularly during periods of international tension."). For a general discussion of nativistic trends, see Berta Esperanza Hernández-Truyol, *Natives, Newcomers and Nativism: A Human Rights Model for the Twenty-First Century*, 23 Fordham Urb. L.J. 1075 (1996).

⁶⁹ See Elvia Arriola, *LatCrit Theory, International Human Rights, Popular Culture and the Faces of Despair in INS Raids*, 28 U. Miami Inter-Am. L. Rev. 244 (1996-97) (discussing border town raids and indiscriminate rounding up of people who look Mexican, without regard for citizenship).

⁷⁰ See, e.g., *Santiago v. Steinhart*, No. 89 Civ. 2069 (RPP), 1993 WL 106302, at *1 (S.D.N.Y. Apr. 5, 1993) (alleging discrimination, including employer asking for green card after being told applicant was born in Puerto Rico).

⁷¹ See Wildman, *supra* note 13, at 9 (discussing use of language to categorize race and relating story that shows interchangeability of Spanish surnames, resulting in invisibility).

ish monolinguals or if their English is Spanish (foreign) accented.⁷² Recent xenophobic English-first/only movements can only serve to entrench Latinas'/os' outsidership, foreignness, and nonmembership in "America."⁷³

A final and critical way in which language alienates Latinas/os is the "othering" effect of having to travel foreign worlds.⁷⁴ Language is but a marker of identity,⁷⁵ regardless of the Supreme Court's inability to understand that relationship between the two.⁷⁶ Imposition of dominant English language-speak simultaneously grants power to the powerful and subjugates the subordinated.⁷⁷ Because knowledge is socially constructed, and language is but a means of communicating

⁷² See Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 *Yale L.J.* 1329, 1333-48 (1991) (discussing prejudice against persons with different accents).

⁷³ See Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism and Official English*, 77 *Minn. L. Rev.* 269, 278-79 (1992) (identifying myth that English is only real language for "American" identity as one of many myths underlying American nativism movement).

⁷⁴ See Gloria Anzaldúa, *Haciendo Caras, una entrada*, in *Haciendo Caras*, *supra* note 2, at xxii ("To speak English is to think in that language, to adopt the ideology of the people whose language it is and to be 'inhabited' by their discourses."); Wildman, *supra* note 13, at 9.

Language contributes to the invisibility and regeneration of privilege. To begin the conversation about subordination, we sort ideas into categories such as race and gender. These words are part of a system of categorization that we use without thinking and that seems linguistically neutral. Race and gender are, after all, just words. . . . We place people into these categories because our world is gendered. Similarly, our world is also raced. . . . But the problem does not stop with the general terms "race" and "gender." Each of these categories contains the images, like an entrance to a tunnel with many passages and arrows pointing down each possible path, of subcategories.

Id.

⁷⁵ See Anzaldúa, *supra* note 1, at 59 ("Ethnic identity is twin skin to linguistic identity—I am my language. Until I can take pride in my language, I cannot take pride in myself.").

⁷⁶ See *Hernández v. New York*, 500 U.S. 352 (1991) (causing Spanish to disappear from courtroom by making translated testimony official version; putting Latina/o jurors in second class by excluding them when they state they do not know if they will be able to ignore original Spanish language testimony in favor of translated version).

⁷⁷ See Norma Alarcón, *The Theoretical Subject(s) of This Bridge Called My Back and Anglo-American Feminism*, in *Haciendo Caras*, *supra* note 2, at 356, 363 ("The silence and silencing of people begins with the dominating enforcement of linguistic conventions, the resistance to relational dialogues, as well as the disablement of peoples by outlawing their forms of speech."); see also Kit Yuen Quan, *The Girl Who Wouldn't Sing*, in *Haciendo Caras*, *supra* note 2, at 212, 214-15 (describing how her parents insisted that she "master" English to fulfill "Chinese American dream," how she "was lonely for someone to talk to who could understand how [she] felt, but [she] didn't even have the words to communicate what [she] felt," and how, in an attempt to effect that communication, she "had to learn feminist rhetoric," which, while providing words to express oppression, "still reflects the same racist, classist standards of the dominant society," making author feel she is "being put down for what [she says] or how [she] talk[s]").

and re/creating that knowledge, the imposition of the English language also imposes its social context of monolingualism, homoculturalism, and ethnic and national origin supremacy. English is the dominant paradigm. Its very use evokes, infuses, and entrenches its race-based identity construct and its conflated view of race and ethnicity/nationality in everyday conversation. This monolingualism not only subordinates but also silences the Latina/o worldviews.

In sum, this Part has exposed how Latinas'/os' race, ethnicity, and nationhood are conflated, confused, and manipulated in and by the dominant society to create, interpret, and enforce a paradigm that renders them others, outsiders, foreign—often in *our* own, *our* parents', and *our* grandparents' country of birth. The constructed model renders the citizen-alien fabrication an axiomatic truth. Latinas'/os' worlds are subordinated by the dominant normative narrative thereby depriving Latinas/os of *our* normativities, *our* identity. Such condition is inconsistent with the notions of equality and equal participation purportedly inherent in the dominant model,⁷⁸ and confirms the exigent need for a LatCrit paradigm that will incorporate *las voces Latinas* into the discourse. The following Part, focusing on Latinas and on the additional obstacles based on gender and culture that they encounter in their world traveling, reinforces the need for such a *nueva teoría*.

II

LATINAS: BORDERS (EN)GENDERED

*Como casi todos los pueblos, los mexicanos consideran a la mujer como un instrumento, ya que los deseos del hombre, ya de los fines que le asignan la ley, la sociedad o la moral. Fines, hay que decirlo, sobre los que nunca se le ha pedido su consentimiento y en cuya realización participa sólo pasivamente, en tanto que "depositaria" de ciertos valores. Prostituta, diosa, gran señora, amante, la mujer transmite o conserva, pero no crea los valores y energías que le confían la naturaleza o la sociedad. En un mundo hecho a la imagen de los hombres la mujer es sólo un reflejo de los hombres. Pasiva, se convierte en diosa, ser que encarna los elementos estables y antiguos del universo; la tierra, madre y virgen; activa es siempre función, medio, canal. La feminidad nunca es un fin en sí mismo como lo es la hombría.*⁷⁹

⁷⁸ See Anita L. Allen, The Proposed Equal Protection Fix for Abortion Law: Reflections on Citizenship, Gender, and the Constitution, 18 Harv. J. L. & Pub. Pol'y 419, 426-27 (1995) (stressing that "full, first-class" citizenship should mean "equality of political rights" (quoting Judith N. Sklar, *American Citizenship: The Quest for Inclusion* 1 (1991))).

⁷⁹ Octavio Paz, *El Laberinto de la Soledad* 35-36 (1980). Translation:

Now in this Part, I turn to the second set of relationships that is significant to the development of an inclusive, non-essentialist LatCrit paradigm—the internal relationships within our *comunidades*. These relationships reveal the subordination of Latinas by the *comunidad Latina*, by and within Latino normativity.

A. *The Impact of Sex*

The cultural expectations/interpretations of Latinas, simply because of their sex, within the *cultura Latina* tracks the dominant paradigm's construction of sex. As the quoted passage reveals, the Latina is defined by the Latino in his dominant position in the family, church, and state. The Latina did not participate in, or consent to, the definition that determines who she is. She is fabricated and sculpted in the image, desire, and fantasy of the Latino.⁸⁰ The Latina is a vessel, relegated to be the repository of values that she did not create, but for the preservation and transmission of which she is held responsible.

Like all girls, Latinas are socialized to be feminine, to be mothers and wives. Their most important aspiration is to get married, have children, and serve their families. Our playthings—*muñequitas*, *juegitos de cocina y de casa*⁸¹—are to prepare us for our adult life—homemaking and child and husband caretaking. The feminist critique of such male defined, female role normativity is extensive. Sociologists,⁸² philosophers,⁸³ and legal scholars⁸⁴ alike have identified the

Like almost all other peoples, the Mexican considers woman as an instrument, sometimes of masculine desires, sometimes of the ends assigned to her by morality, society and the law. It must be admitted that she has never been asked to consent to these ends and that she participates in their realization only passively, as a "repository" of certain values. Whether as prostitute, goddess, *grande dame* or mistress, woman transmits or preserves—but does not believe in—the values and energies entrusted to her by nature or society. In a world made in man's image, woman is only a reflection of masculine will and desire. When passive, she becomes a goddess, a beloved one, a being who embodies the ancient, stable elements of the universe: the earth, motherhood, virginity. When active, she is always function and means, a receptacle and a channel. Womanhood, unlike manhood, is never an end in itself.

Octavio Paz, *The Labyrinth of Solitude* 35-36 (Lysander Kemp trans., Grove Press 1985).

⁸⁰ See Ruth Burgos-Sasscer & Francis Hernández Giles, *La Mujer Marginada: Por la Historia: Guía de Estudio* 83 (1978) (noting, for example, that traditionally, Latina's role is reproductive, domestic, one of homemaking and child raising, subordinate to men).

⁸¹ Author's translation: dolls, kitchen sets, homemaker games.

⁸² Sociologist Rhoda Howard makes the following observation about sex:

The easiest and clearest social distinction to make is between men and women; in many societies, as our own language reflects, the male is the standard of humanness and the female is the deviation. As Simone de Beauvoir put it in her classic feminist meditation, to be female is to be the existential "Other." . . . The female possessed of knowledge threatens the orderly acquisition and delimitation of society's cognitive symbols created—in most cultures—by her

male as the standard of humanness and the female as less than the standard.

The hermetic basis for subordination of the otherwise normative NLaW's experience, however, is the isolatable perversity of sexism. In terms of race, ethnicity, and national origin, NLaWs are but the *normativos*' counterparts.⁸⁵ Of course, this changes if, for example, the NLaW person is poor, disabled, uneducated, or lesbian.⁸⁶ Such an essentialist gender perspective⁸⁷ is not adequate for Latinas whose gender-based world is complicated by their journeys as ethnic, racial, and frequently language and class others.⁸⁸ Latinas' gender definition,

male status superiors; thus from Eve to medieval wise-women and beyond, Judeo-Christian culture has punished the woman who exercises the human capacity for self-reflection with its attendant threat of making claims upon society.

Rhoda E. Howard, Dignity, Community, and Human Rights, in *Human Rights in Cross-Cultural Perspectives* 81, 88 (Abdullahi Ahmed An-Na'im ed., 1992) (footnote omitted).

⁸³ See, e.g., Simone de Beauvoir, *The Second Sex* (Vintage Books 1989) (1949) (scrutinizing facts and myths of women's lives, using literature, history, biology, and philosophy to examine problems women encounter and possibilities open to them); Sandra Lipszits Bem, *The Lenses of Gender* (1993) (arguing that masculinity and femininity are merely constructions of cultural schema that polarizes gender).

⁸⁴ See, e.g., Catharine A. MacKinnon, *Feminism Unmodified* (1987).

Men's physiology defines most sports, their needs define auto and health insurance coverage, their socially designed biographies define workplace expectations and successful career patterns, their perspectives and concerns define quality in scholarship, their experiences and obsessions define merit, their objectification of life defines art, their military service defines citizenship, their presence defines family, their inability to get along with each other—their wars and rulerships—defines history, their image defines god, and their genitals define sex.

Id. at 36 (footnote omitted).

⁸⁵ See Elizabeth V. Spelman, *Inessential Woman: Problems of Exclusion in Feminist Thought* 4 (1988) ("A measure of the depth of white middle-class privilege is that the apparently straightforward and logical points and axioms at the heart of much of feminist theory guarantee the direction of its attention to the concerns of white middle-class women.").

⁸⁶ See Wildman, *supra* note 13, at xi (noting how white privilege interacts with other systems of privilege, including those based on economic wealth, physical ability, and sexual orientation); Harris, *supra* note 7, at 255 ("[I]n feminist legal theory, as in the dominant culture, it is mostly white, straight, and socioeconomically privileged people who claim to speak for all of us.").

⁸⁷ See Harris, *supra* note 7, at 255 (defining gender essentialism as "the notion that there is a monolithic 'women's experience' that can be described as independent of other facets of experience like race, class, and sexual orientation").

⁸⁸ See Anzaldúa, *supra* note 74, at xv-xxvi. Anzaldúa calls for the development of new theories which incorporate race, class, ethnicity, and sexual difference:

In our literature, social issues such as race, class and sexual difference are intertwined with the narrative and poetic elements of a text, elements in which theory is embedded. In our *mestizaje* theories we create new categories for those of us left out or pushed out of the existing ones.

their inferiority to men, is a teaching reinforced by family, church, and the dominant as well as the Latina/o culture.⁸⁹

Latinas' multiple "othering" is sometimes further compounded by sexuality and correlative homophobia as exacerbated by cultural and religious expectations.⁹⁰

The racialized, ethnicized, foreignness *fronteras* encountered by Latinas/os, as dictated, constructed, and perceived by the majoritarian norm, is compounded for Latinas by both dominant and Latina/o norms on sex and the *cultura Latina's* normative dictates on culture⁹¹ and language. The dominant culture's gendered borders render all women less than full citizens simply because of their sex. The cultural gendered borders create a Latina underclass within her own *comunidad*.

Id.; see also Gloria Bonilla-Santiago, *Breaking Ground and Barriers* 21, 24, 44 (1992) (noting shortcomings in current social science and feminist research with regard to race and class, and calling on Latina women to develop independent movement and critical theory).

In a study conducted from 1989 to 1991 with women from a barrio in New York City, the researchers found that class and gender position were the issues of greatest concern to women "with education as a potentially empowering strategy." Rina Benmayor et al., *Centro de Estudios Puertorriqueños, Hunter College, Responses to Poverty Among Puerto Rican Women: Identity, Community, and Cultural Citizenship* 10 (1992).

⁸⁹ See Bonilla-Santiago, *supra* note 88, at 11 (noting ways in which Latinas are taught they are inferior to Latinos); Mary Becker, *Strength in Diversity: Feminist Theoretical Approaches to Child Custody and Same-Sex Relationships*, 23 *Stetson L. Rev.* 701, 707-10 (1994) (discussing "dominance feminism" and its assessment that women's work in private sphere is systematically devalued); see also MacKinnon, *supra* note 84, at 55 ("We notice in language as well as in life that the male occupies both the neutral and the male position . . . whereas women occupy the marked, the gendered, the different, the forever-female position."); Lucinda M. Finley, *Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning*, in *Feminist Legal Theory: Foundations* 571-79 (D. Kelly Weisberg ed., 1993) (arguing that legal language and reasoning reflect male-based perspective, and discussing limitations of this perspective in various areas of law); *supra* notes 82-84 and accompanying text (discussing male as norm).

⁹⁰ See Anzaldúa, *supra* note 1, at 19-20 (noting that lesbians of color make "ultimate rebellion" against native culture and often fear rejection by family and culture); Bonilla-Santiago, *supra* note 88, at 31-32 (citing Latinos' homophobia and unilateral focus on race as sole oppression facing Latinas).

⁹¹ See Bonilla-Santiago, *supra* note 88, at 4.

In addition to structural barriers such as lack of positive role models and mentors, and economic hardship, Hispanic girls and women face the constraining sex-role expectations ingrained in Hispanic culture. The typical sex-role stereotypes of the macho male and the submissive female still pervasive in society today seem even more powerful in Latina/o culture. The associated attitude is extremely debilitating. It hinders and precludes Latina women from leaving the domestic domain of home and family, entering the labor force, gaining leadership roles, or acquiring a formal education.

Id.

B. *Latina/o Gender Attitudes*

The *cultura Latina*, including its predominantly Catholic religious mandates, intrudes to aggravate Latinas' gender subordination. The Latina identity is developed in the context of the "ideal woman" fabricated in the mold of the Virgin Mary,⁹² a construct called *marianismo* that "glorifie[s] [Latinas] as strong, long-suffering women who ha[ve] endured and kept Latino culture and the family intact."⁹³

[M]arianismo defines the ideal role for woman. And what an ambitious role it is, taking as the model of perfection the Virgin Mary herself. *Marianismo* is about sacred duty, self-sacrifice, and chastity. About dispensing care and pleasure, not receiving them. About living in the shadows, literally and figuratively of your men—father, boyfriend, husband, son—your kids, and your family. Aside from bearing children, the *marianista* has much in common with *una monja de convento*, a cloistered nun—but the order she enters is marriage, and her groom is not Christ but an all too human male who instantly becomes the single object of her devotion for a lifetime.

... [M]arianismo insists you live in a world which no longer exists and which perpetuates a value system equating perfection with submission. Veneration may be the reward tendered to *la mujer buena*, but in actuality you end up feeling more like a servant than a subject for adoration. Indeed, the noble sacrifice of self (the ultimate expression of *marianismo*) is the force which has for generations prevented Hispanic women from even entertaining the notion of personal validation. Yet such female subjugation is not only practiced today, it is—ironically—enforced by women, handed down as written in stone by our mothers, grandmothers, and aunts! We have reduced the mandates of *marianismo* to a set of iron-clad rules of behavior, ten commandments if you will.⁹⁴

We are taught to be *pulcra* (pure) and passive; we are discouraged from activity and aggressiveness. We also are taught early, and

⁹² Significantly, 85% of Latinas consider themselves Catholic, and many hold political and social views that are influenced by religious doctrine. See Bonilla-Santiago, *supra* note 88, at 15. The imagery of the Virgin Mary as the female ideal is firmly rooted in and praised by culture. As one author stated, "Some Chicanas are praised as they emulate the sanctified example set by (the Virgin) Mary. The woman par excellence is mother and wife. She is to love and support her husband and to nurture and teach her children. Thus, may she gain fulfillment as a woman." *Id.* at 11.

⁹³ *Id.* at 11 (emphasis added); see also Pierrette Hondagneu-Sotelo, *Gendered Transitions: Mexican Experiences of Immigration* 9 (1994) ("The ideological corollary [to machismo] for women, . . . *marianismo* (marianism), is modeled on the Catholic Virgin Madonna, and prescribes dependence, subordination, responsibility for all domestic chores, and selfless devotion to family and children.").

⁹⁴ Rosa María Gil & Carmen Inoa Vázquez, *The María Paradox* 7 (1996).

severely, the meaning of *respeto* (respect): we must be deferential to our elders and all the men in our lives—fathers, brothers, husband—and ask permission for everything.⁹⁵ In sum, the Latina is supposed to be a self-sacrificing, virgin mother, a saint, superhuman. She is deemed a failure, however, if in her humanness she fails by falling short of this super- and suprahuman religious ideal.

This mythical ideal Latina sharply contrasts with its better known counterpart: *machismo*, which molds men as “cold, intellectual, rational, profound, strong, authoritarian, independent and brave.”⁹⁶ One recent book describes *machismo* as having a “dark side”

[that] mandates that men have options, and women have duties. It means that a man's place is *en el mundo*, in the world, and a woman's place is *en la casa*, in the home. It means that your brother is praised for being ambitious, while you are discouraged for that same quality. And it means that first your father, then your brothers, then your husband give the orders and you obey them.⁹⁷

In *The María Paradox*,⁹⁸ two Latinas—one Cuban and one Dominican, both holding doctorates and practicing in the mental health field in New York City, predominantly within the Latina/o community—study Latinas. While such subject/object identification would appear to be able to overcome the oppressions of both the dominant paradigm and the Latino construction and subordination of sex, the authors' transparent internalization of the male dominant, male identified, cultural perspective prevails. For example, they suggest that *machismo*—the cultural construction of the he-man who is the dictator of norms at work, at play, at church, and at home, who must be worshipped, obeyed, and deferred to by the *esposa*—can have a “light” side that should be encouraged.⁹⁹ This “*machismo* lite” has a man performing all the stereotypical roles—carrying heavy packages for, ceding the best seat to, and opening doors for his *dama*.¹⁰⁰

This caricatured male conduct, labeled a *good* thing by the authors, pales only in comparison to the instructions they decree to La-

⁹⁵ See Burgos-Sasscer & Giles, *supra* note 80, at 85 (observing that woman's most important function is to marry and serve her family).

⁹⁶ Bonilla-Santiago, *supra* note 88, at 11. “[M]any Latin males are expected to show their manhood by behaving in a strong fashion, by demonstrating sexual powers, and by asserting their authority over women.” *Id.* at 12. The author notes that both gender role descriptives are socio-cultural phenomena. See *id.* at 11.

⁹⁷ Gil & Vázquez, *supra* note 94, at 6; see also Hondagneu-Sotelo, *supra* note 93, at 9 (“Machismo calls for men to be sexually assertive, independent, and emotionally restrained, to wield absolute authority over their wives and children, and to serve as family breadwinners.”).

⁹⁸ Gil & Vazquez, *supra* note 94.

⁹⁹ See *id.* at 5.

¹⁰⁰ See *id.*

tinias. The authors direct Latinas to scheme coquettishly to evoke such protective behavior—carrying heavy bags, opening doors, and ceding good seats—in their men.¹⁰¹ In handing down these commandments, the authors succeed in reinforcing culture-based, gendered stereotypes and roles. With *The María Paradox*, educated, doctorate-holding, Latina psychotherapists have “confirmed” that Latinas who, every day, are bearing, raising, and educating children, keeping house, cooking meals, and more likely than not also working outside the home, are simply too helpless to open doors, carry packages, or deal with a bad seat at the movies. Tragically, the authors engage in the very Latina-subjugates-Latina conduct that they claim to loathe in their definition of *marianismo*.

Such clear (and plainly understood by all) gender role dichotomization in the *cultura Latina* has far reaching repercussions. The male belongs in the public sphere and the female—at least the *buena mujer*—in the private sphere. Public women—epitomized by whores—have defied the boundaries of their appropriate place and are *las mujeres malas* who are not respectable and do not deserve or get *respeto*. *La buena mujer* exists in the home and is to be a virgin until she gets married.

Men, on the other hand, dominate public discourse. Men go to work and are the family providers. They also have no (hetero)sexual boundaries. Men are encouraged to engage in pre- (and extra-) marital conquests.¹⁰² Indeed, they are judged on the *machismo* scale in direct proportion to the extent of their sexual triumphs.

The cultural proscriptions imposed on Latinas have broad socioeconomic consequences. Latinas are the poorest of any demographic group in the United States.¹⁰³ Even when circumstances require that they enter the public sphere by joining the labor force, they pursue positions that replicate their “appropriate” conduct—those “feminine” occupations as caretakers: nannies, cooks, maids, jobs at the

¹⁰¹ See *id.* at 5-6.

¹⁰² See Burgos-Sasscer & Giles, *supra* note 80, at 85 (observing that dichotomy between Hispanic mothers and wives and Hispanic prostitutes allows men to maintain moral system while sustaining latent polygamy of which they are proud).

¹⁰³ See generally Berta Esperanza Hernández-Truyol, *Las Olvidadas—Gendered in Justice/Gendered Injustice: Latinas, Fronteras, and the Law*, 1 *Iowa J. Gender, Race & Just.* (forthcoming 1997) (manuscript at 10-15, 52-59, on file with the *New York University Law Review*) (providing demographics of Latina population that establish Latinas as poorest, least educated, and most economically marginalized of all ethnic groups).

bottom of the pay scale (probably *because* they so well replicate their "natural" role as wife, mother, housewife).¹⁰⁴

This *frontera interna* also plays a critical role in maintaining *las fronteras externas*, the external borders, tall and impenetrable against Latinas' full membership in any community. For instance, when Latinas pursue nontraditional jobs, the cultural mandates of *respeto*, self-abjection, passivity, and insecurity ill prepare Latinas for success. Consider, for example, the effect of *la cultura* on Latina lawyers. On the one hand, those who follow the cultural norm of docility will be deemed ill equipped to represent clients properly. Conversely, those who defy the cultural shackles may be viewed by the male dominated and identified establishment as loud, overly aggressive, and ill suited to be an advocate.¹⁰⁵

To read and believe the myths, Latinas are a walking, talking stereotype: dependent, submissive, sentimental, seductive, pretty, maternal, flirtatious, unstable, impulsive, soft, sweet, intuitive, cowardly, insecure, passive, resigned, envious, weeping, modest, monogamous, faithful, homey, and hysterical.¹⁰⁶ From a Latina-feminist perspective, these gender-role caricatures, so firmly ingrained in culture that their mythical character has transmogrified into absolute tradition and truths, are virtually impenetrable barriers preventing any deconstruction of cultural gender roles. In turn, acceptance of stereotyped images as the real Latina is a *frontera* in the way of Latinas' attainment of *respeto* and equality in any society.

C. Palabras: *Language and Gendered Invisibility*

As I speak to you in the many incarnations of my native tongue, one of the live tongues of this country, I feel isolated from you as if by a thick wall. *Pero no lo hago para romper la pared, lo hago tan solo para reconocerla.* My intention is not to break the wall down, just to recognize it. This recognition is a first step to an honest understanding of ethnocentric racism and of the connections between the two. So the central and painful questions for *me* in this encounter become questions of speech: *En qué voz* with which voice, *anclada en qué lugar* anchored in which place, *para qué y por qué* why and

¹⁰⁴ See Bonilla-Santiago, *supra* note 88, at 8 ("Many [Latinas] still tend to pursue the more feminine occupations as a way to enter the work setting because they do not understand the organizational cultures.").

¹⁰⁵ See, e.g., *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) (holding that denial of partnership to woman for being aggressive, unladylike, and not wearing makeup is permissible under employment laws).

¹⁰⁶ See Burgos-Sasscer & Giles, *supra* note 80, at 84 (citing Jorge Gissi, *Mitología de la Femenidad* [sic], in *Mujer en el Orden Social Machista* (Ander Egg et al. eds., 1972)).

to what purpose, do I trust myself to you . . . *o acaso juego un juego*
de cat and mouse just for your entertainment . . . *o por el mio?*¹⁰⁷

A final, but significant *frontera* that must be conquered to facilitate Latinas' journeys is the complex, complicit role language plays in their subordination.¹⁰⁸ The Spanish language is gendered. Every term is sexed. A door (*puerta*) is female, and a roof (*techo*) is male; a book (*libro*) is male, a notebook (*libreta*) is female. The gendered character is peculiar in some instances. The word for mosquitoes (*mosquitos*) is male; the word for all flies (*moscas*) is female. Of course, there are male flies and female mosquitoes; language solves that problem by adding *varón* (male) or *hembra* (female) after the generic sexed term: *el mosquito varón ó el mosquito hembra; la mosca varón ó la mosca hembra*.

To be sure, such linguistic peculiarity would appear not to have a sex-based subordinating effect as some of the sexed terms are female gendered. However, the obstacle for Latinas arises out of another linguistic idiosyncrasy. Rules of grammar dictate that the sex for general or pluralistic terms, such as the ethnic descriptor "Latino," is male. This rule of language officially makes male the norm and Latinas invisible. In everyday commonspeak, then, the gendered nature of *español* renders Latinas languaged out of existence.

This silencing of Latinas simply underscores and re/presents Latinas' multiple foreignness in all the worlds they travel. Gloria Anzaldúa powerfully has described Latina traveling:

As a *mestiza* I have no country, my homeland cast me out; yet all countries are mine because I am every woman's sister or potential lover. (As a lesbian I have no race, my own people disclaim me; but I am all races because there is the queer of me in all races.) I am cultureless because as a feminist, I challenge the collective cultural/religious male-derived beliefs of Indo-Hispanics and Anglos; yet I am cultured because I am participating in the creation of yet another culture, a new story to explain the world and our participation in it, a new value system with images and symbols that connect us to each other and to the planet. *Soy un amasamiento*, I am an act of kneading, of uniting and joining that not only has produced both a creature of darkness and a creature of light, but also a creature that questions the definitions of light and dark and gives them new meanings.¹⁰⁹

¹⁰⁷ María Lugones, *Hablando cara a cara/Speaking Face to Face: An Exploration of Ethnocentric Racism*, in *Haciendo Caras*, supra note 2, at 46, 50.

¹⁰⁸ This is a separate (and additional) language-based concern for Latinas beyond those that affect the community as a whole.

¹⁰⁹ Anzaldúa, supra note 1, at 80-81.

A new LatCrit paradigm can, should, and must eradicate Latina silencing, invisibility, and countrylessness by showing an interest in, concern for, and incorporation into the new narrative of Latina issues, interests, and identities. It is imperative, however, that any LatCrit breakthrough address both the external and internal normativities that effect Latina subordination.

IV

LATCRIT AS LIBERATION THEORY

It is plain that for all Latinas/os, and particularly for Latinas, to re/claim normativity "[n]ecesitamos teorías"¹¹⁰ we need theories, re/visions that will permit, facilitate, encourage, reinforce, re/invent, and re/construct travels in our myriad worlds. LatCrit can be just such a *teoría*. To achieve the full possibilities of LatCrit theory as a law reform project, the final part of this Essay proposes a model for LatCrit scholarship and activism that focuses on the interdependence and indivisibility of identities.¹¹¹

A. *Latinas and LatCrit: From Margin to Center*

Latinas provide a tremendous challenge to the development of a constructive, nonessentialist model. As multiple-layered outsiders, Latinas have been completely *olvidadas* by the normative structure, in the context of which they constitute far too many deviations from the norm to be manageable in a legal theory universe that looks at one

¹¹⁰ Anzaldúa, *supra* note 74, at xxv ("Necesitamos teorías that will rewrite history using race, class, gender and ethnicity as categories of analysis, theories that cross borders, that blur boundaries—new kinds of theories with new theorizing methods.").

¹¹¹ These terms are borrowed from the international human rights construct. See, e.g., World Conference on Human Rights: The Vienna Declaration and Programme of Action, pt. 1., para. 5, U.N. Doc. A/CONF.157/23 (1993) ("All human rights are universal, indivisible, and interdependent and interrelated."); Report of the International Conference on Population and Development, principle 4, U.N. Doc. A/CONF.171/13 (1994) ("The human rights of women and the girl-child are an inalienable, integral and indivisible part of universal human rights.").

For a discussion of how substantive international human rights can assist in the practice of LatCrit theorizing, see Berta Esperanza Hernández-Truyol, *Building Bridges: Bringing International Human Rights Home*, 9 *La Raza* L.J. 69 (1996) (discussing how incorporation of substantive human rights into our domestic law can help condition and position of Latinas/os in United States, including with regard to welfare and immigration "reform" legislation); see also Symposium: International Law, Human Rights and LatCrit Theory, 28 *U. Miami Inter-Am. L. Rev.* 223 (1996-97); Berta Esperanza Hernández-Truyol, *International Law, Human Rights and LatCrit Theory: Civil and Political Rights—An Introduction*, 28 *U. Miami Inter-Am. L. Rev.* 223, 224 (1996-97) (discussing human rights laws' positive view of acceptable treatment for all people and how that view allows all people to participate in "global society").

layer of self at a time.¹¹² Latinas, even the most “*normativas*” among them, differ from the neutral, legal, founding-father-look-alike ideal of the (allegorical) reasonable man in sex (meaning gender), race/ethnicity, and culture—not to mention that, statistically speaking, most Latinas will also deviate in terms of language, religion, socioeconomic class, and education.¹¹³ The concept of “the straight white Christian man of property [as] the ethical universal”¹¹⁴ is otherworldly to the Latina.

Latinas’ multiple exclusions, to date not considered in discourse, have resulted in barriers to Latinas from actively participating in any of their communities—both the “external” so-called “American” community as well as the *comunidad Latina*—and thus they have been denied visibility, the power to speak, and the potential to be heard. To include Latinas, a LatCrit paradigm must incorporate an internationalist, globalized, feminist, multi/cross-cultural perspective. Such a nonessentialist model brings to the center of discourse the amalgam of Latinas’ identities, including race, ethnicity, nationhood, gender, and culture, and will prevent Latinas’ exclusion.

In addition, because of the subordinating effect to Latinas of our internal relationship to *la cultura Latina*, a LatCrit paradigm must be sensitive to and develop a roadmap regarding the consideration of culture. In this regard, however, the model also must be careful not to replicate, inadvertently, any of the subjugating effects of the external relationship of the dominant culture to the *cultura Latina*.

Thus, there are two applications and interpretations of cultural conservation that the LatCrit model must avoid. One is the use of culture as a shield by the elite *within* the *cultura Latina* with the desire, purpose, and consequence of keeping Latinas invisible, nonexistent, and disempowered. The other is the use of culture as a sword by

¹¹² As a group, Latinas are the poorest, least educated, lowest skilled, and least likely to hold jobs or obtain training that will facilitate the means of emerging from poverty, of any ethnic or racial group in the United States. See generally Hernández-Truyol, *supra* note 103. However, Latinas’ marginalization is not limited to poor, uneducated Latinas; rather, it reaches all levels. This phenomenon is powerfully established by the fact that Latinas with a college degree earn less than NLoWs with only a high school diploma. See Derrick Z. Jackson, Clinton’s Affirmative Action Speech: The Boldest Move of His Presidency, *Boston Globe*, July 21, 1995, at 17 (noting, as “ongoing disparity,” that white men with only high school degrees make more than Hispanic women with college degrees); Joseph Torres, Clinton’s stance on affirmative action heartens Hispanics, *Idaho Statesman*, July 29, 1995, at 9A (same).

¹¹³ See Hernández-Truyol, *supra* note 103 (manuscript at 6-15) (analyzing demographics of Latinas in United States and impact of their many-layered differences from normative mold).

¹¹⁴ Gayarati Chakravorty Spivak, *The Making of Americans, the Teaching of English, and the Future of Cultural Studies*, 21 *New Literary Hist.* 781-89 (1990).

a dominant group to eviscerate and subordinate the *cultura Latina*, or a variant of it, as foreign to, and outside of, the normative mold. In other words, LatCrit must avert the mis/use of the protection of culture so as to perpetuate women's subordination in the name of tradition, or to subordinate nondominant subcultures in the name of law—both perfidious results.

In the context of cultural considerations, LatCrit theorizing must support and promote the concept of a benevolent (meaning nondiscriminatory and nonsubordinating) respect for culture.¹¹⁵ A LatCrit paradigm, while embracing and being sensitive to cultural differences, must simultaneously reject oppressive aspects of culture, particularly sex-subordinating or sex-marginalizing practices or beliefs. To attain such cultural pluralism, the subject's position as part of a cultural whole must be considered. Thus, integral to the LatCrit model is the asking of the "culture question"¹¹⁶ and the evaluation of the obtained information from both the object and subject positions with the goal of articulating *teorías* that promote equality, understanding, and full participation rather than imposing subjugating, culture-essentialist perspectives.

¹¹⁵ International human rights documents provide a model for and support such an approach. While treaties consistently address culture as a basis upon which protections must be afforded, not one cites to culture as the grounds upon which other protected rights may be abridged. See, e.g., Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 180, U.N. GAO, 34th Sess., Supp. No. 46, at 195, Annex at art. 2(f), U.N. Doc. A/34/46 (1979) (mandating that States Parties "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, *customs and practices* which constitute discrimination against women" (emphasis added)). The Women's Convention goes so far so as to require that States Parties

take all appropriate measures . . . [t]o modify the *social and cultural patterns of conduct* of men and women, with a view to achieving the elimination of prejudices and *customary and all other practices* which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

Id. art. 5(a) (emphasis added).

In fact, the Women's Convention is noteworthy because it even proscribes stereotyping. See, e.g., id. art. 10(c) (requiring that States Parties ensure "the elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education"); see also Charter on the Rights and Welfare of the African Child, July 11, 1990, art. 21, OAU Doc. CAB/LEG/24.9/49. The African Charter on the Rights and Welfare of the African Child expressly balances cultural rights and cultural pretexts to disempower or harm persons simply because of their sex. The Charter requires member states of the Organization of African Unity to "abolish customs and practices harmful to the welfare, normal growth and development of the child, and in particular . . . those customs and practices discriminatory to the child on the grounds of *sex* or other status." Id. (emphasis added).

¹¹⁶ See Berta Esperanza Hernández-Truyol, Women's Rights as Human Rights—Rules, Realities and the Role of Culture, 21 Brook. J. Int'l L. 605, 668 (1996) (proposing that, in order to ensure women's full membership and participation in their communities, critical inquiries into lawmaking must include analysis of cultural implications).

A LatCrit project that fails to confront both the internal and external components of Latina oppression will imagine an "equality" that will involve a job market open only to Latinos; a concept of privacy that hides *cosas de familia*, including a few bruises and the occasional black eye; a free market that exploits and undervalues Latinas' services (paying what the market will bear means less when you are female *or* colored so imagine being female *and* colored); a culture that requires them to be saints; a concept of citizenship that relegates Latinas to second-class membership in all their communities; and a construction of racial, ethnic, and national identities that marginalizes them as foreigners in all their worlds. Thus, it is imperative for LatCrit to emphasize the necessity and demand for Latina participation in the social, political, communitarian, and legal discourse. Absent such pathways for communication and absent such inclusion, Latinas, even those with passports, will remain handicapped traveling their *mundos*.

B. LatCrit Possibilities

LatCrit as an articulable theoretical construct both presents a great challenge and offers great promise. First, the challenge lies in the great diversity—the panethnicity¹¹⁷—of Latinas/os. Latinas/os come from different ethnic, cultural, and racial heritages, as well as from varied national origins. Some are citizens, some are not; some noncitizens are present with, and some without, proper documentation. Many have been in the United States for generations, others are recent arrivals. Some are monolingual in Spanish, some in English, others are bi/multilingual. Some are homocultural and others can (and some do daily) culturally crossdress. Such apparently cacophonous, heterogeneous demographics would appear to interfere with any attempt at a coherent, cohesive paradigm. This notion of panethnicity, upon an initial consideration, could appear to be an impediment to the articulation of any congruent *teoría*. Ironically, however, such heterogeneity is what holds the promise of LatCrit: the development of a paradigm that accepts, embraces, and accommodates persons as mul-

¹¹⁷ The basis of the concept of Latina/o panethnicity is "the pan-Latino[a] consciousness emerging in this country" conjoined with the realization that Latinas/os "must never obscure the uniqueness of the experiences of these various Latino[a] groups." Angelo Falcón, Viewpoints: Through the Latin Lens, *Newsday*, Sept. 3, 1992, at 106. The idea of panethnicity is centered on the notion that, in the United States, "more brings [Latinas/os] together than separates them within the political process." *Id.* Panethnicity is sometimes cited as a *raison d'être* for LatCrit discourse (i.e., our common problems are many, and together we can ensure the power to find a solution). Other times it is the source of skepticism as to whether such a theoretical construct can exist (i.e., our differences are many and will impede a common perspective from which to launch cohesive discourse).

tidimensional entities rather than as conveniently divisible parts of that whole being.

A LatCrit model must deconstruct and reject the existing legal philosophy that fragments worlds by looking only at one aspect of identity at a time.¹¹⁸ Of course, this dominant atomistic model is a convenient, superficial, artificially created, normative driven, comparativist construct that facilitates “othering.”¹¹⁹ The analysts, having fabricated their image of the pertinent universe, can handily exclude those who do not fit the mold.¹²⁰ The existing “rule of law” driven construct possesses inherent national, racial, gender, religious, sexuality, and cultural hierarchies. The normative NLW legal paradigm essentializes¹²¹ and disadvantages Latinas/os, as we are the multiplicity of our identities, not the atomization of them.

¹¹⁸ See, e.g., Crenshaw, *supra* note 8, at 160-67 (urging integration of feminist theory with black liberation and antiracist political theory); Harris, *supra* note 7, at 256-63 (arguing that feminist legal theory, despite its expressed desire to reflect experiences of all women, largely ignores nonwhite women or relegates them to footnotes).

¹¹⁹ See Davis & Wildman, *supra* note 13, at 1381-82 (discussing “de-rac[ing]” of Anita Hill during the hearings, making her only a woman within a “white racist conspiracy”); Delgado, Norms, *supra* note 13, at 934 (questioning normative analysis as covering actual injustice and oppression and maintaining unfair status quo); Delgado, Shadowboxing, *supra* note 13, at 817 (discussing how outsiders can tell counterstories to overturn dominant narratives); Gotanda, *supra* note 13, at 61-62 (pointing out that whiteness is social construct ignoring ethnicity as aspect of race).

¹²⁰ See generally Wildman, *supra* note 13 (discussing how language, social patterns, and laws privilege whiteness).

¹²¹ Essentialism has been the tragic flaw of earlier critical movements. For example, the Crits evolved as mostly race- and sex-essentialist *normativos*. See, e.g., Mark Kelman, A Guide to Critical Legal Studies (1987); Harlon L. Dalton, The Clouded Prism, 22 Harv. C.R.-C.L. L. Rev. 435 (1987) (criticizing Critical Legal Studies movement for silencing voices of color); Duncan Kennedy, The Role of Law in Economic Thought: Essays on the Fetishism of Commodities, 34 Am. U. L. Rev. 939 (1985) (presenting four essays discussing the role of law in different aspects of nineteenth-century economic thought); Mark V. Tushnet, Perspectives on Critical Legal Studies: Introduction, 52 Geo. Wash. L. Rev. 239 (1984) (examining critical legal studies’ attack on formalism).

The FemCrits turned out to be race essentialists who criticized the *normativos*—Crits and non-Crits alike—for *their* exclusion from discourse simply because of their sex (meaning gender). See Crenshaw, *supra* note 8, at 162-63 (noting that for African Americans, distinct experience of “racial otherness” is so dominant that interests of black women are relegated to periphery in public policy discussions); Harris, *supra* note 7, at 255 (referring to notion of monolithic women’s experience independent of other facets of experience, like race, class, and sexual orientation, as “gender essentialism”). Similarly (and simultaneously), the RaceCrits, while criticizing the FemCrits for their lack of cognizance as to the role race played (and plays) in the marginalization and “othering” of persons of color, overlooked sex. Thus, by necessity, Critical Race Feminism was born, because in the RaceCrit discourse, somehow, somewhere the notion of gender subordination and marginalization was lost—much like the normativity of race subordination was lost in the FemCrit discourse—and had to be brought back to center by the critical race feminists. See Critical Race Theory: The Key Writings That Formed The Movement (Kimberlé Crenshaw et al. eds., 1996); Harris, *supra* note 7, at 255 (noting that feminist legal theory is

As far as traditional classifications go, LatCrit theory must reject defining identity as anything other than multidimensional because doing so would result in an essentializing of self.¹²² Latinas/os are the combination, not the stratification, of our multiple selves. Therefore, under the LatCrit model, rather than independent glyphs carved in stone, notions of personhood, race/ethnicity, nationhood, and cultural citizenship must be viewed as fluid, interdependent, and indivisible.

The central epistemological question to ask in the construction of a LatCrit paradigm is what conditions need to exist in order to have a pluralistic, nonessentialist LatCrit theory. Because all "reality" is socially constructed, the model must incorporate broadbased sources of knowledge and information on race, sex, culture, language, and ethnicity. This re/construction will avoid the flawed structure of the NLW rule of law which evolved as racialized, ethnicized, gendered, and nativistic.¹²³

A LatCrit theory, at its core, would insist on the indivisibility, inviolability, and interdependence of identities that are constitutive of personhood. As such, a LatCrit paradigm could eschew the "rule of law" as we know it.¹²⁴ Rather than the existing normative comparativist model with the NLoW at the center as the aspirational aim, rather than placing the "elite," the most privileged, at the nucleus, LatCrit would place at the center the notion of full citizenship, the inviolable right of *every* member of society to respect, dignity, and

dominated by white, straight, and socioeconomically privileged people, whose story about women does not describe experience of black women); see also Critical Race Feminism (Adrian Katherine Wing ed., 1997).

Although one of the prominent leaders of critical theory is a Latino, all the Crit movements included very few Latinas/os, as shown in the modest representation of Latinas/os in an extensive, comprehensive, and inarticulably valuable annotated critical race bibliography published in 1993. Richard Delgado & Jean Stefancic, *Critical Race Theory: An Annotated Bibliography*, 79 Va. L. Rev. 461 (1993). This bibliography included only seven writers who, based upon their names, were identifiable as Latinas/os, of whom only four had focused on the Latina/o experience and only two of whom were women. To be sure, one possible explanation for this early absence of Latina/o voices in the critical legal movement could be the result of the small number of Latinas/os in the academy. In the 1996-97 year, there were only 117 Latinas/os of whom 43 were Latinas. See *supra* note 6. The latest available data indicates that there is a total of 5,504 law professors in U.S. law schools. See Richard A. White, *Variations in the Success Rates of Minority and Nonminority Candidates In the AALS Faculty Appointments Register*, AALS Newsletter, Mar. 1996 (reporting that only 755, or 13.7%, of the 5,504 law professors who provided ethnic information in the 1995-96 Directory are members of minority groups).

¹²² See *supra* notes 7, 8, 121 and accompanying text for a discussion of essentialism.

¹²³ See Wildman, *supra* note 13, at xi-xii (discussing social construction of race and privilege of whiteness through different devices, social patterns, and laws).

¹²⁴ See *id.* at 142-47 (discussing relation between rule of law and justice and role of rule of law in perpetuating oppression).

selfhood, with acceptance of identities as indivisible, interrelated, and interdependent rather than splintered.

Adoption of such a model will place LatCrit uniquely in the position of displacing the schisms of the past (namely, "othering" of selves by the majority, "othering" of selves within *nuestra comunidad*, silencing of Latinas' voices, and the eclipsing of Latinas' visibility), developing, expanding, and transforming the content, meaning, and application of legal theoretical constructs. LatCrit can change the landscape of legal discourse.

CONCLUSION

LatCrit, using Latinas'/os' cultural, ethnic, and national origin diversity, and Latinas' gendered history and experience, can develop a nonessentialist, pluralistic, egalitarian, and equitable notion of legal discourse and community. Indeed, the central epistemology of norms is social, cultural, and political. Dominance by one group defines, and is constitutive of, social, cultural, and legal realities and identity. The existing, essentialist notion of the "American" has excluded "others" who look or sound foreign to the self-selected norm setters, creating a class of aliens within the borders. This "American" ideal excludes many, particularly Latinas/os,¹²⁵ who cannot blend into the "melting pot" because of the colorizing, feminizing, spanishizing, and latinizing consequences of their membership. This "American" definition of normativity has created an exclusive/elite community with *fronteras* denying access to "others."

Consider a postessentialist model in which an individual can freely and comfortably journey in her/his various worlds, engaging in cross-participation, rendering the communities interdependent and indivisible without barriers to knowledge and identity-flows that not only allow traversing the worlds, but help to re/constitute the communities themselves with due regard to the needs and concerns of the varied citizenry. Such unobstructed traveling facilitates information flow from the many perspectives and enhances norm articulation in a pluralistic and inclusive fashion.

The hope of LatCrit lies in the articulation of a system of analysis that, by deconstructing the political normative and rebuilding a participatory and inclusive policy model, can result in praxis. To that end, and in developing such a LatCrit construct, this Essay urges the incorporation of a globalized, feminist, multi/cross-cultural vision of international human rights norms—a perspective that promotes a

¹²⁵ Of course, this analysis also applies to non-Latina/o blacks and non-Latina/o Asians. Significantly, the Latina/o category includes Latina/o blacks and Asians.

conception of identity and rights centered on indivisibility, inviolability, and interdependence. Such an expanded, developed, and transformed philosophy can serve to eradicate essentialism, *fronteras*, and margins, providing the pathway for the silenced voices of these borderlands to travel to the center of the narrative.